

**BRIAN BOGGESS, SEA
LITTLE vs. McCLURE**

October 31, 2013

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<p>1 IN THE UNITED STATES DISTRICT COURT 2 MIDDLE DISTRICT OF GEORGIA 3 MAON DIVISION</p> <p>4 JARRETT LITTLE and CINDY LITTLE, as guardians and natural parents of LINDSEY LITTLE,</p> <p>5 Plaintiffs,</p> <p>6 vs. CASE NO.: 5:12-cv-147(MTT)</p> <p>7 ALONZO K. McCLURE; ALEX LEE, Inc., MERCHANTS DISTRIBUTORS, 8 Inc., OF NORTH CAROLINA; MERCHANTS TRANSPORT OF 9 HICKORY, Inc., and THE TRAVELERS INDEMNITY COMPANY OF 10 CONNECTICUT,</p> <p>11 Defendants.</p> <p>12</p> <p>13 DEPOSITION OF: BRIAN BOGGESS, SEA</p> <p>14 DATE: October 31, 2013</p> <p>15 TIME: 10:24 a.m.</p> <p>16 LOCATION: 300 East McBee Avenue Suite 500 17 Greenville, SC</p> <p>18 TAKEN BY: Counsel for the Plaintiff</p> <p>19 REPORTED BY: SHARON G. HARDOON, Court Reporter, Notary Public</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 INDEX</p> <p>2 WITNESS/EXAMINATION</p> <p>3 Witness Name Page Line</p> <p>4 Brian Boggress</p> <p>5 Examination By Ms. McArthur 4 12</p> <p>6 Errata Page 188 1</p> <p>7 Certificate of Reporter 191 1</p> <p>8</p> <p>9 EXHIBITS</p> <p>10 Exhibit Description Page Line</p> <p>11 PLF. EXH. CV; Boggress 4 24</p> <p>12 PLF. EXH. 3A, SEA 219651 15 17</p> <p>13 PLF. EXH. 3B, Distance v. Time chart 15 19</p> <p>14 PLF. EXH. 3C, Screen shot 15 21</p> <p>15 PLF. EXH. 3D, Data 15 23</p> <p>16 PLF. EXH. 3E, Definition of vehicles 186 6</p> <p>17 PLF. EXH. 4-A, Bill; 5/22/12 122 13</p> <p>18 PLF. EXH. 4-B, Bill; 12/19/12 122 15</p> <p>19 PLF. EXH. 5, Field Notes 127 3</p> <p>20 PLF. EXH. 6, Project Assignment Report; 128 22</p> <p>21 3/16/12</p> <p>22 PLF. EXH. 7, DDEC reports 130 1</p> <p>23 PLF. EXH. 8, Deposition summaries 135 1</p> <p>24 PLF. EXH. 9, Alexander Report 135 15</p> <p>25 PLF. EXH. 10, Photos 142 16</p> <p>PLF. EXH. 11, Diagram 148 24</p>
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<p>1 APPEARANCES:</p> <p>2 ATTORNEYS FOR THE PLAINTIFF</p> <p>3 JARRETT LITTLE and CINDY LITTLE, as guardians and natural parents of 4 LINDSEY LITTLE:</p> <p>5 THE LAW FIRM OF KATHY MCARTHUR BY: KATHY MCARTHUR 6 6055 Lakeside Commons Drive Suite 400 7 Macon, Georgia 31210 (478) 238-6600 kmcArthur@mcArthurLawfirm.com</p> <p>8</p> <p>9 ATTORNEYS FOR THE DEFENDANT</p> <p>10 ALONZO K. McCLURE; ALEX LEE, Inc., MERCHANTS DISTRIBUTORS, Inc., OF NORTH CAROLINA; 11 MERCHANTS TRANSPORT OF HICKORY, Inc., and THE TRAVELERS 12 INDEMNITY COMPANY OF CONNECTICUT:</p> <p>13 SMITH MOORE LEATHERWOOD, LLP BY: KURT M. ROZELSKY 14 300 East McBee Avenue, Suite 500 Greenville, SC 29602 15 (864) 242-6440 kurt.rozelsky@smithmoorelaw.com</p> <p>16</p> <p>17 Also Present:</p> <p>18 John Hughes, Risk Management; Alex Lee, Inc.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 STIPULATION</p> <p>2 It is stipulated by and between counsel</p> <p>3 that this deposition is being taken in accordance</p> <p>4 with the South Carolina Rules of Civil Procedure;</p> <p>5 that all objections as to notice of this deposition</p> <p>6 are hereby waived; that all objections except as to</p> <p>7 form are reserved until the time of trial; and that</p> <p>8 the deponent does not waive reading and signing of</p> <p>9 this deposition.</p> <p>10 BRIAN BOGGESS,</p> <p>11 being first duly sworn, testified as follows:</p> <p>12 EXAMINATION</p> <p>13 BY MS. MCARTHUR:</p> <p>14 Q. State your name for the record, please.</p> <p>15 A. Brian Boggress.</p> <p>16 Q. Mr. Boggress, do you want to read and sign</p> <p>17 the deposition transcript once it's typed, or do you</p> <p>18 want to waive that right?</p> <p>19 A. I would like to read and sign, please.</p> <p>20 Q. Okay. You can consider yourself</p> <p>21 continuously sworn so you don't have to do it in front</p> <p>22 of a notary, okay?</p> <p>23 A. Okay, thank you.</p> <p>24 (PLF. EXH. 1, CV; Boggress, was marked for</p> <p>25 identification.)</p>



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1 BY MS. MCARTHUR:
2 Q. I marked as Plaintiff's Exhibit 1 the CV
3 that you provided. Are there any -- is this up to
4 date?
5 A. I believe so, yes, ma'am.
6 Q. You've taken nothing in addition to being a
7 project engineer at SEA Limited, correct?
8 A. That's my title.
9 Q. Have you taken any other accident
10 reconstruction courses except the two at
11 Northwestern that you took in 2008?
12 A. Those two classes are obviously
13 specifically entitled Accident Reconstruction. Some
14 of the other courses that are listed pertain to
15 accident reconstruction above and beyond that.
16 Q. Well, the first two that you took were the
17 Traffic Accident Reconstruction I and II at
18 Northwestern in February 2008, correct?
19 A. Yes, ma'am.
20 Q. And it wasn't that -- you really weren't
21 actively involved in reconstructing automobile
22 accidents before you took those two courses as part
23 of your work, were you?
24 A. I had been doing accident reconstruction
25 and evaluations dating back to my time at the

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1 automotive safety lab in graduate school, so that
2 would be '99 through '01.
3 Q. '99 through '01, you did some then?
4 A. Yes, ma'am. And then even at Honda. I
5 mean, my job at Honda from '01 until '07 was
6 automotive safety, so we were crashing vehicles,
7 evaluating vehicles, evaluation crash dynamics of
8 vehicles.
9 Q. Well, tell me then, during your time at
10 Honda how many crashes did you reconstruct?
11 A. Full vehicle, I mean, our lab we crashed --
12 Q. I'm talking about you, personally?
13 A. I don't have a number. Hundreds.
14 Q. How many?
15 A. Hundreds.
16 Q. Hundreds while you were a safety engineer
17 at Honda?
18 A. Yes, ma'am.
19 Q. Who was your supervisor there?
20 A. I had multiple managers over the division.
21 The Japanese chief engineer was a guy by the name of
22 Takayuki, T-A-K-A-Y-U-K-I, last name, Sugama,
23 S-U-G-A-M-A.
24 Q. Was he where you were?
25 A. Yes, he was.

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1 Q. Is he still there?
2 A. I believe he has returned to Japan.
3 Q. Who was still there that was there when you
4 were there?
5 A. I believe a guy by the name of John Turley,
6 T-U-R-L-E-Y, would still be there.
7 Q. Who were the others that you just mentioned
8 were your supervisors?
9 A. John Turley was the manager. Also we had a
10 guy by the name of Charles Thomas was a manager as
11 well during my time there.
12 Q. Who else was in the department with you
13 during that time?
14 A. I mean, in terms of co-workers,
15 supervisors? I mean, there's 35 or so safety
16 engineers probably in the division.
17 Q. So there were 35 people in the same
18 department -- the same job you had?
19 A. Everybody had a different role, different
20 responsibilities, but, yes. I mean, they were all
21 tasked with the development of the vehicles for
22 safety purposes.
23 Q. How many of them were also reconstructing
24 hundreds of crashes as you say you were?
25 A. Several.

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1 Q. How many?
2 A. I don't know.
3 Q. Who were they?
4 A. Guys by the name of Matt Seman, S-E-M-A-N,
5 Grant Foreman, F-O-R-E-M-A-N.
6 Q. Are they still there?
7 A. I believe they are.
8 Q. Same job, as far as you know?
9 A. What do you mean by same job?
10 Q. Are they still in the same job position, as
11 far as you know?
12 A. I'm sure they've been promoted to some
13 degree, but I don't know to what.
14 Q. Are you in touch with them?
15 A. Maybe once in a while I might run into them
16 at a conference. Not on a regular basis.
17 Q. When was the last time you saw either one
18 of them?
19 A. It's been a few years. I don't know the
20 last time.
21 Q. What is Claims & Litigation Management
22 Alliance?
23 A. It's an organization of claims litigation
24 folks. I know that there's insurance adjusters,
25 there's attorneys involved. There's consulting



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<p style="text-align: right;">Page 9</p> <p>1 engineering firms like ourselves. I mean, I've been 2 at meetings of the CMLA, or CLM. 3 Q. Is it something that -- you're actually 4 listed as part of the Claims & Litigation Management 5 Alliance, correct? 6 A. I believe I'm registered as part of the 7 group. I'm not -- as far as I'm aware, there's not 8 a fee or anything. I did join. I've not been to 9 the conference. 10 Q. What role does SEA Limited play in Claim & 11 Litigation Management Alliance? 12 A. I believe to some degree they sponsor, but 13 I do not know to what extent. 14 Q. And that is an organization that is 15 primarily for advancing the defense of lawsuits, is 16 it not? 17 A. Not to my understanding, no. 18 Q. Is it about plaintiff's cases? 19 A. I believe it's geared toward managing 20 claims, managing cost of claims. I've had several 21 people -- attorneys, defense counsel that have told 22 me even that they are members of it because of the 23 number of people involved. But then again, they 24 don't like the organization because it's managing 25 their cases and cutting down their bills and their</p>	<p style="text-align: right;">Page 11</p> <p>1 than to try to, quote, manage their claims, 2 correct? 3 A. I don't know their full mission. 4 Q. It's a defense group, isn't it? 5 A. I don't know if it's the exact -- from what 6 you read, I don't hear the word injured party or 7 other in that mission, but I don't know their full 8 purpose. 9 Q. Are you unwilling to say that the Claims & 10 Litigation Management Alliance is a defense -- is an 11 organization devoted to defending litigation claims 12 made by injured parties? 13 A. I don't know enough about it to agree or 14 disagree with you. 15 Q. Well, you've been a part of it for how 16 long? 17 A. A couple years. 18 Q. You actually were invited to speak at it, 19 were you not? 20 A. I applied to speak and was allowed to, 21 yes. 22 Q. You were invited to speak last year, 23 correct? 24 A. Again, for the speaking opportunities, they 25 ask if you're interested and you apply. So it's not</p>
<p style="text-align: right;">Page 10</p> <p>1 work on cases and making cases go away. So in some 2 cases, it's hurting them. 3 I don't know the exact role that the 4 organization has. I know that we are somewhat 5 involved in it. 6 Q. So do you know what the mission of it is? 7 A. I don't. 8 Q. Why would it show you in your biography as 9 part of it? I mean, why would your picture and your 10 biography be on the Claims & Litigation Management 11 Alliance? 12 A. Again, when you join, they ask you to post 13 a bio. I registered and I had to do that because -- 14 specifically, I participated on a panel at one of 15 the meetings a couple years ago, so I had to upload 16 a biography at that point. 17 Q. CLM's members and fellows include risk and 18 litigation managers, insurance and claims 19 professionals, corporate counsel, outside counsel 20 and third-party vendors. Is that your understanding 21 too? 22 A. If it says that. It sounds similar to what 23 I've seen or heard. 24 Q. Mr. Boggess, nothing about CLM has anything 25 to do with representing injured plaintiffs other</p>	<p style="text-align: right;">Page 12</p> <p>1 necessarily an invitation as opposed to an 2 application that's been approved. 3 Q. You don't know what role SEA plays in 4 Claims & Litigation Management Alliance? 5 A. As I said before, I that SEA does some type 6 of sponsorship. The degree, I do not know. 7 Q. It says that its mission -- one of its 8 missions is communication -- to foster communication 9 between all parties; risk managers, claims managers, 10 and adjusters, general counsel, insurance company 11 executives, attorneys, brokers and service 12 providers. 13 Are you aware that that's one of the 14 missions of that group. 15 A. I don't know that I read that. I take it 16 you're reading off their website or some information 17 that they put out. 18 Q. I mean, it doesn't mention injured parties, 19 does it? 20 A. Not in that statement, no. 21 Q. In the last year, tell me any plaintiffs 22 attorneys that you worked with? 23 A. Brent Stewart out of Rock Hill. The 24 Charles Monnett firm out of Charlotte. 25 Q. Okay.</p>

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1 A. There's definitely more of those. There's
2 a couple more as I sit here.
3 Q. I marked as Exhibit Number 2 -- oh, have
4 you had -- since 2008, other than the two courses
5 that you mentioned at Northwestern, have you had any
6 other traffic accident reconstruction courses
7 specifically?
8 A. Sure.
9 Q. Where?
10 A. As you go up through there. I mean, the
11 crash data retrieval courses. A course dedicated to
12 imaging and studying the electronic data stored on a
13 vehicle's electronic controls modules.
14 Q. You're just getting the data off the
15 computer systems and other devices on a vehicle,
16 correct?
17 A. That's part of the reconstruction, yes.
18 Q. But it's not as far as the actual -- you're
19 going to use that data then at some other point to
20 help reconstruct, right? This is just a course on
21 retrieving the data, correct?
22 MR. ROZELSKY: Object to the form.
23 THE WITNESS: It touches on both.
24 Interpretation of the data, how to use the
25 data, the meaning of the data, which obviously

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1 directly affects reconstruction.
2 BY MS. MCARTHUR:
3 Q. Well, it's titled Crash Data Retrieval
4 Technician course, correct?
5 A. It is.
6 Q. So what else would you say is an accident
7 reconstruction course?
8 A. Accessing and Interpreting Heavy Vehicle
9 Data Recorders.
10 Q. Which is a similar thing to the one you
11 just mentioned?
12 A. Yes. Again, that's retrieving the data,
13 studying the data, understanding the data, using the
14 data.
15 The next one, EDC Vehicle Dynamics Crash
16 Simulations. It's a class reconstructing accidents
17 and using computer tools to do so.
18 Q. Have you done that with this case?
19 A. I have.
20 Q. What of the materials that you have here
21 would demonstrate that for me?
22 A. The set of images I think you marked as
23 Exhibit 3 in the analysis file. Some of the inputs,
24 outputs are the tables of data that support that
25 data.

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1 Q. I don't have any other images other than
2 data images that would be part of the 3C.
3 A. These tables here are the inputs -- some of
4 the inputs and outputs from that particular data
5 attached in this folder here entitled Analysis.
6 Q. Have those been provided before today?
7 A. To Mr. Rozelsky or other?
8 Q. Yes.
9 A. No.
10 Q. I don't think he provided me with those
11 tables today.
12 A. I'm sure we can get you copies.
13 Q. Those will be 3D.
14 MS. MCARTHUR: The things provided
15 today, for the record, are 3A, 3B and 3C, and
16 now 3D as far as things that we were unaware.
17 (PLF. EXH. 3A, SEA 219651, was marked for
18 identification.)
19 (PLF. EXH. 3B, Distance v. Time chart,
20 was marked for identification.)
21 (PLF. EXH. 3C, Screen shot, was marked
22 for identification.)
23 (PLF. EXH. 3D, Data, was marked for
24 identification.)
25 MS. MCARTHUR: 3A is the calculations,

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1 3B is distance and time graph, 3C is the things
2 you need a magnifying glass to read, and 3D is
3 this list of data.
4 MR. ROZELSKY: Data inputs.
5 BY MS. MCARTHUR:
6 Q. Have you done a computer simulation of this
7 wreck?
8 A. Yes.
9 Q. Is it something that can be shown on a
10 computer?
11 A. It could be visually looked at as well as
12 looking at the raw data.
13 Q. Is it something that you can show me
14 today?
15 A. I do not have, I guess, output video type
16 files at this point, no.
17 Q. Well, how am I going to see it?
18 A. The images in 3C are screen shots of kind
19 of the start and end of each one of them and I can
20 explain each one.
21 Q. As far as the simulation that you've done
22 on the computer, is it something that's a moving
23 thing that -- over time where the vehicles are
24 moving, a simulation?
25 A. They would. Again, the computer program

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<p style="text-align: right;">Page 17</p> <p>1 you set the inputs, so you set where vehicle one and 2 vehicle two start, and then you set the parameters; 3 throttle, braking, steering. Those parameters which 4 are in those tables. And then it marches forward in 5 time in small increments of time. 6 The images there kind of show the beginning 7 and the end. Obviously, there's going to be a 8 series of images between those. 9 Q. Can you put it on a DVD or PDF file, or 10 whatever, and send it to me? 11 A. Yes, I can output the video files for each 12 one of the cases that you have the images for. 13 Q. Okay. When did you actually do this 14 simulation? 15 A. Within the last two weeks. 16 Q. What caused you to do that? 17 A. Based upon Mr. Rozelsky's request in the 18 last two weeks to put together more reconstruction 19 work on this case. 20 Q. When were you personally first contacted 21 about this case? 22 A. I'd have to have the file material that I 23 think is being copied right now to know for sure. 24 It was shortly before the first inspection that 25 would have occurred over a year ago, almost a year</p>	<p style="text-align: right;">Page 19</p> <p>1 A. He did take measurements of the scene, yes, 2 ma'am. 3 Q. And are you basing your opinions on 4 measurements that he took at the scene? 5 A. I have certainly factored those in, yes. 6 Q. Have you discussed the case with 7 Mr. Peters? 8 A. To some degree, yes, ma'am. 9 Q. And he's an employee of SEA also? 10 A. He is. 11 Q. He's in Lawrenceville, Georgia? 12 A. Yes, ma'am. 13 Q. What were you personally initially asked to 14 do on this case? 15 A. Initially, I believe Mr. Rozelsky called me 16 about this case and asked me to do the inspection, 17 the initial inspection. I was unavailable to due to 18 prior engagements, so Mr. Peters went out to do the 19 inspection, which turned into inspections. 20 Q. Has Mr. Peters done anything else besides 21 that work? 22 A. He compiled certainly some of the drawing 23 files and has done photogrammetry of the pictures 24 that he collected for purposes of measurement as 25 well.</p>
<p style="text-align: right;">Page 18</p> <p>1 and-a-half ago. 2 Q. Is it your testimony that you participated 3 in the inspection? 4 A. I was not present at the inspection, no. 5 Q. So you didn't inspect the scene, did you? 6 A. I have not, no, ma'am. 7 Q. And you didn't inspect either of the 8 vehicles, did you? 9 A. No. One of my colleagues did. 10 Q. Is that Mr. Peters? 11 A. It is. 12 Q. And what is Mr. Peters' role with the 13 company? 14 A. He is a project engineer, as far as I'm 15 aware. 16 Q. What types of things does he do? 17 A. He does accident reconstruction. He has 18 specialty in tire issues with his background. 19 Q. What other types of -- does he just do 20 general reconstructions and testify in court too? 21 A. He could, yes. I don't know what all work 22 he does. I know that he does reconstruction as well 23 and does testify. 24 Q. And he's the one who did all the 25 measurements of the scene?</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. All of the pictures that have been taken in 2 the file, in your file are Mr. Peters' photos, 3 right? 4 A. Of the vehicles and the scene, yes. I 5 don't believe I've taken any photos. 6 Q. You haven't been to the scene, correct? 7 A. Correct. 8 Q. The drawings that were in the materials 9 that I've sent out to be copied those are Mr. Peters 10 drawings? 11 A. I believe so, yes, ma'am. 12 Q. Have you met with Mr. Peters to discuss his 13 thinking about it? 14 A. I don't believe we discussed this case face 15 to face. We've done it over the phone. I've 16 certainly seen Mr. Peters, but I don't believe I've 17 talked to about this case face-to-face with him. 18 Q. How many times have you talked to him about 19 it? 20 A. I don't know. A handful certainly. 21 Q. Has he also reconstructed this case? 22 A. Not to my knowledge. 23 Q. Do you know if Mr. Peters initially went to 24 the wrong site for his inspection of the scene? 25 A. I'm not aware of that if he did.</p>

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1 Q. I was talking to you about other courses
2 here on accident reconstruction and you've gotten to
3 the E.D.C course it's like seven or eight down. Any
4 others?
5 A. Certainly factors in some of the other
6 classes. The applied vehicle dynamics is of course
7 put on by the Society of Automotive Engineers.
8 Basically, it comes down to the handling of a
9 vehicle, the dynamics of a vehicle. What a vehicle
10 can and can't do which directly affects
11 reconstruction.
12 And then, you know, aside from specific
13 courses, there's a number of conferences that I've
14 attended that deal with presentations by other
15 reconstructionists on their research, on their
16 testing, on their reconstruction methodology.
17 Q. You've been never been a law enforcement
18 officer, have you?
19 A. No, ma'am.
20 Q. And you've had any reconstruction training
21 similar to what -- well, the law enforcement
22 training that officers who reconstruct wrecks have
23 typically as far as the numbers and courses they
24 take, have you?
25 MR. ROZELSKY: Object to the form.

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1 THE WITNESS: Well, first of all, the
2 class, that Traffic Accident Reconstruction,
3 Northwestern, if I recall there was probably
4 between 15 and 20 persons in that two class.
5 There were two engineers, like myself, and the
6 rest were law enforcement personnel. So those
7 are the courses that they take in order to be
8 able to, I believe, to sit to take the ACTAR,
9 basically police certification for
10 reconstruction.
11 In order to take that course as an
12 engineer, I was not required to take the precursors
13 for those, which is basic scene documentation that
14 the officers would have been required to take given
15 my engineering background.
16 I mean, the trainings are quite different
17 from an engineering perspective versus a police
18 officer investigation.
19 Q. I don't see where you've taking any mapping
20 courses. Have you taken any mapping courses?
21 A. The 3D laser scanning is a mapping course,
22 put on by folks from Farah, which is basically 3D
23 scanning of scenes or vehicles or otherwise.
24 Q. Tell me, during your time at Honda, what
25 was the primary focus of your work?

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1 A. Development of vehicles for crash
2 protection.
3 Q. And what else did you do, though? I mean,
4 tell me what your job was.
5 A. It was -- again, I worked as a safety
6 engineer, so Honda --
7 (Interruption in the proceedings.)
8 THE WITNESS: Can you repeat the
9 question?
10 BY MS. MCARTHUR:
11 Q. I wanted to know your job duties while you
12 were employed by Honda.
13 A. I was a safety engineer. So, I mean,
14 you're probably aware, Honda makes vehicles, so we
15 were tasked with developing new vehicles for the
16 American and international fleet of vehicles.
17 So in order to sell vehicles, they have to
18 meet certain regulated requirements as well as
19 internal requirements of so it was developing the
20 vehicles for safety. I did everything from
21 pedestrian safety to occupant safety, full vehicle
22 structure, seat belts, air bags.
23 The work involved, you know, studying the
24 safety industry as a whole, what's going on in
25 accidents, how can we better protect the motoring

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1 public?
2 Q. I don't see anywhere in your CV where it
3 says that as a senior engineer at Honda that you did
4 any accident reconstruction.
5 A. Every vehicle --
6 MR. ROZELSKY: Let me object. Was
7 that a question or was that a statement.
8 BY MS. MCARTHUR:
9 Q. Is it there?
10 A. Part of the development of the safety
11 systems is crashing testing. And every crash that
12 goes in, it has to be reconstructed and evaluated
13 for its performance.
14 Q. So you may have done crash testing the, or
15 you did do crash testing; is that right?
16 A. Yes, ma'am.
17 Q. But you didn't do going out to the scene of
18 a wreck that had happened and actually doing the
19 reconstruction?
20 A. No, not at Honda.
21 Q. Okay. So, then from '99 to 2001, you
22 didn't actually do any going to a scene and
23 reconstructing a wreck as part of your work as a
24 research assistant at Automobile Safety Center of
25 Applied Biomechanics, did you?



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1 A. We were provided information from real
2 world crashes and were tasked with reconstructing
3 those accidents in some cases, yes. I did not go to
4 scenes specifically, but we were provided
5 documentation of the accidents and tasked with some
6 aspects at least of reconstruction on those.
7 Q. Actually, in your work from '99 to 2000
8 focusing on injury caused by wrecks, not
9 reconstructing the wreck itself, isn't that true?
10 A. Some of it was speed related or dynamics
11 related. It's a biomechanics lab, so the strong
12 focus of it was assessment, injury and mitigation.
13 Q. You never, during the course of that work
14 from '99 to 2000 actually went to a scene and took
15 photographs of it or measurements to be the person
16 who did the accident reconstruction to determine
17 specifically what happened and the forces in the
18 wreck, that's not what you were doing from '99 to
19 2001, was it?
20 MR. ROZELSKY: Object to the form.
21 You can answer.
22 THE WITNESS: Again, as I stated, I
23 did not go to the scenes. We did reconstruct
24 the accidents with regards to forces involved
25 so that we could understand the injuries.

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1 BY MS. MCARTHUR:
2 Q. Who sent you information?
3 A. Nitza for one.
4 Q. I mean, were you -- who else would send you
5 information where you would do any type of
6 reconstruction?
7 A. The University the Virginia's lab was
8 partnered with what's called one of the Ciren
9 Centers, C-I-R-E-N, which are sponsored by Nitza.
10 We were paired with the trauma center in Northern
11 Virginia. And if they got certain criteria of
12 injured persons in from a certain type of accident,
13 we would get the details of the accident and be
14 tasked with reconstructing those accidents to
15 understand the injury patterns and the accident
16 itself.
17 Q. Well, you actually said here in your CV
18 that your specific work included development of test
19 methodologies for assessment fact based deformation
20 and the subsequent injury risk of ballistic helmets
21 for the United States military?
22 A. I did that as well, yes, ma'am.
23 Q. And this was a two-year period that you
24 were?
25 A. I was, yes.

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1 Q. So what percentage of your time was working
2 on helmets?
3 A. I didn't touch helmets my first year there,
4 so certainly less than 50. I don't have a
5 percentage to give you.
6 Q. Well, a lot of your work was about helmets,
7 wasn't it, when you were at the research
8 institute?
9 A. My thesis was on helmets specifically. I
10 had a lot to do automotive exposures as well. My
11 entire first year was dedicated to automotive work,
12 as I recall.
13 Q. But it wasn't specifically -- it was trying
14 to determine -- your focus was on what injuries
15 would come from specific forces, wasn't it?
16 A. That was certainly one aspect, yes.
17 Q. That was the primary aspect of what you
18 were studying, wasn't it?
19 A. Again, to say primary, what percentage, I
20 don't know. The lab, as I said before, was a
21 biomechanics lab tasked with understanding injury,
22 risk thresholds, what does it take to injure the
23 body, and then loading environments. It could be
24 ballistic military, it could be automotive, but how
25 does the body respond to loading. In order to do

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1 that, you have to understand the loading so you have
2 to understand the vehicle crash. It all interplays.
3 Q. You were saying airbag deployments and
4 injuries, correct?
5 A. I did, yes.
6 Q. You actually wrote some articles about risk
7 injuries in females during that time, correct?
8 A. I did write a number of papers with regards
9 to that, yes.
10 Q. Right. It was -- as far as what your
11 papers were about were -- Injury Risk Function for
12 the Small Female Risk in Axial Loading. That's one
13 of them, right?
14 A. Which page are you on.
15 Q. Page 6. And Injury Risk Functions for the
16 Fifth Percentile Female Upper Extremity.
17 A. I was involved in that study, yes.
18 Q. Then you had the analysis of Upper
19 Extremity Response Under Side Airbag Loading,
20 Characterization of Elbow Joint Loading, Accident
21 Analysis and Prevention, correct?
22 A. Yes, ma'am.
23 Q. Those were the articles that had to do with
24 automobile injury that you wrote pursuant to the
25 work that you did from '99 to 2001, correct?

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1 A. Those are a couple of the papers, yes.
2 Q. There's another one down -- I guess we have
3 some more of the elbow fracture and risk fracture at
4 the bottom of this, but -- actually, the last four
5 on that page. In between there, we're talking about
6 the helmet and head injuries, correct?
7 A. Some of them, yes, ma'am.
8 Q. None of your publications have to do with
9 doing accident reconstruction of wrecks like the
10 Lindsey Little case, do they?
11 A. Some of the publications have to do with
12 accident reconstruction, yes, they do.
13 Q. Tell me which ones.
14 A. I mean, if we just go back to -- start on
15 Page 5, there's papers on electronic data recovery
16 -- or evaluation of electronic data for vehicles,
17 the first one.
18 The third one has to do with commercial
19 vehicles. Braking capabilities of commercial
20 vehicles with regards to accidents, or potential
21 accidents.
22 The fourth one is again, heavy truck
23 evaluations. Using hard stop data from on vehicle
24 data.
25 The next paper is a reconstruction paper

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1 looking at the crush of the vehicle published with
2 accident analysis and prevention in 2009.
3 The third from the bottom is a paper
4 about -- well, again, injury potential, how a person
5 interacts with the vehicle in the occupant space in
6 a crash.
7 And the last two, again, are heavy vehicle
8 with regards to braking and hard stops, which all
9 factor into accident reconstruction.
10 Q. Do any of these publications have any
11 application to any of the issues in this case?
12 A. Insofar as some of them have to do with
13 braking capabilities of the vehicles, yes. The
14 second paper on the list is basically scientific
15 methodology to analyze any forensic case. It's a
16 methodology paper. So certainly the steps utilized
17 would be applicable.
18 Q. Nothing else?
19 A. To some degree, there are several vehicle
20 crash, vehicle investigations, so certainly the
21 methodologies are similar. The vehicle dynamics
22 that we're talking about, maybe with regard to this
23 accident -- I don't believe any of these papers deal
24 with the vehicle dynamics outside of the braking.
25 Maybe some strain characteristics.

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1 Q. The courses taught Accident Reconstruction
2 Heavy Vehicle Braking Systems, where have you taught
3 that?
4 A. It's been a few years since I've given that
5 one. I don't recall who all I've given that to.
6 I've given it a few times.
7 Q. To who?
8 A. I've given it as continuing education
9 classes to insurance adjusters for one.
10 Q. When and where?
11 A. I don't recall the group. Like I said,
12 it's been a few years.
13 Q. What about -- I mean, it certainly would
14 have been since you have been away from Honda,
15 wouldn't it?
16 A. Yes, ma'am.
17 Q. So we're not talking about -- I mean, that
18 would have been since 2008, right?
19 A. Yes, ma'am.
20 Q. In the last five years, we're talking
21 about, right?
22 A. Yes.
23 Q. So what about Accident Reconstruction,
24 Making Effective Use of Your Reconstructionist, to
25 whom have you taught that?

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1 A. Again, it would be probably a group of
2 adjusters and/or maybe even some counsel. I don't
3 recall the exact venue.
4 Q. When have you done that?
5 A. I've given that or similar, you know,
6 probably a handful of times over the years to
7 various groups.
8 Q. To groups of insurance adjusters?
9 A. Could be one.
10 Q. Claims representatives?
11 A. Could be, yes, ma'am.
12 Q. How many times?
13 A. Four or five maybe.
14 Q. How many times on the heavy braking
15 systems?
16 A. Probably four or five.
17 Q. What about Biomechanical Analysis and
18 Vehicle Crashes, when have you given or taught a
19 course on that?
20 A. Again, a number of times over my years with
21 SEA. Similar type of groups.
22 Q. Insurance adjusters, claims managers?
23 A. Could be, yes. I mean, often times --
24 again, our SEA has marketing folks and they will ask
25 if I can come and give a speak to whoever they might

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<p style="text-align: right;">Page 33</p> <p>1 have a presentation set up with.</p> <p>2 Q. But you can't tell me when and where you've</p> <p>3 given a presentation on biomechanical analysis and</p> <p>4 vehicle crashes?</p> <p>5 A. I believe I've -- I mean, I believe I've</p> <p>6 given that within the last year in Atlanta even to a</p> <p>7 group of adjusters.</p> <p>8 Q. What about Biomechanical Engineering,</p> <p>9 Relation of Injury and Loading in Vehicle Accidents</p> <p>10 and Premises Liability, when have you given that and</p> <p>11 to whom?</p> <p>12 A. I've probably given a couple times. I</p> <p>13 believe I gave that specific talk maybe three years</p> <p>14 ago in North Carolina to a group of attorneys that I</p> <p>15 was invited to speak to.</p> <p>16 Q. What group was it?</p> <p>17 A. I believe it was the NCADA.</p> <p>18 Q. NC what?</p> <p>19 A. ADA.</p> <p>20 Q. What does that stand for?</p> <p>21 A. I believe it's the North Carolina</p> <p>22 Association of Defense Attorneys.</p> <p>23 Q. Okay. Then, Biomechanics and Products</p> <p>24 Liability, Do The Claims Match the Evidence. When</p> <p>25 have you given that and to whom?</p>	<p style="text-align: right;">Page 35</p> <p>1 A. That's what comes to mind. Again, I don't</p> <p>2 know what all groups I've talked to over the years</p> <p>3 and who all has been there to listen. I show up and</p> <p>4 I give a presentation and I leave.</p> <p>5 Q. It's your memory that all of these</p> <p>6 presentations were even given to claims</p> <p>7 representatives or defense attorneys, correct?</p> <p>8 MR. ROZELSKY: Object to the form.</p> <p>9 THE WITNESS: For the ones I</p> <p>10 specifically recall, yes.</p> <p>11 THE WITNESS: For the ones I</p> <p>12 specifically recall, yes.</p> <p>13 BY MS. MCARTHUR:</p> <p>14 Q. The group that you're a member of, the</p> <p>15 professional affiliations, there's like three of</p> <p>16 them. Is SEA -- okay. Society of Automotive</p> <p>17 Engineers, when did you join that?</p> <p>18 A. Sometime in college.</p> <p>19 Q. And what does that have to do with?</p> <p>20 A. I mean, it's exactly the name, Society of</p> <p>21 Automotive Engineers. So it's everything from OEMs,</p> <p>22 like Honda, Ford, GM to tier three suppliers and</p> <p>23 support consultants like ourselves, and they hold --</p> <p>24 you know, they do a lot of work. They host a lot of</p> <p>25 conferences, including ones on accident</p>
<p style="text-align: right;">Page 34</p> <p>1 A. I believe it was five years ago. That was</p> <p>2 a group of adjusters. I don't even remember, again,</p> <p>3 which group.</p> <p>4 Q. Electronic Control Modules, Effective Data</p> <p>5 Retrieval, when have you given that and to whom?</p> <p>6 A. I believe it was a group of adjusters that</p> <p>7 deal with a lot with heavy vehicles. It covered</p> <p>8 again the passenger vehicle and heavy vehicle, but I</p> <p>9 believe it geared more toward heavy vehicle data</p> <p>10 recovery.</p> <p>11 Q. What about use technology and accident</p> <p>12 reconstruction?</p> <p>13 A. Again the audiences varied, but probably</p> <p>14 similar type of groups we've been talking about.</p> <p>15 Q. Same thing with vehicle accident</p> <p>16 reconstruction and biomechanical engineering?</p> <p>17 A. Yes, ma'am.</p> <p>18 Q. Are these all presentations that are set up</p> <p>19 for you to speak through the marketing efforts of</p> <p>20 SEA?</p> <p>21 A. Typically, yes.</p> <p>22 Q. And all of these presentations were to</p> <p>23 claims adjusters or defense attorney groups that</p> <p>24 you've just -- all of those presentations and course</p> <p>25 teachings; isn't that correct?</p>	<p style="text-align: right;">Page 36</p> <p>1 reconstruction that I've attended. Biomechanics</p> <p>2 that I've attended.</p> <p>3 Q. What else do you offer, yourself, as a</p> <p>4 person who can assist in the investigation of other</p> <p>5 than automobile wrecks, like elevator accidents, I</p> <p>6 think, premises liability?</p> <p>7 A. Yes, ma'am.</p> <p>8 Q. What types of things are you offered as an</p> <p>9 expert on, Mr. Boggess?</p> <p>10 A. My degrees are mechanical and aerospace</p> <p>11 engineering. And I have consulted on a number of</p> <p>12 mechanical engineering type of cases, whether that</p> <p>13 be simple mechanical failures of some type of</p> <p>14 appliance or HVAC system, plumbing fixture, forklift</p> <p>15 accident, workplace accidents with conveyors. You</p> <p>16 know, all those systems are machines of some type of</p> <p>17 or another that mechanical engineers would be in a</p> <p>18 place to evaluate or consult on.</p> <p>19 Q. What percentage of your work would you say</p> <p>20 has to do with automobile wrecks versus workplace</p> <p>21 accidents, forklift accidents, elevator accidents,</p> <p>22 premises liability cases?</p> <p>23 MR. ROZELSKY: Object to the form.</p> <p>24 THE WITNESS: I've never added it up.</p> <p>25 I mean, I would certainly say that more of it</p>

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1 than not is accident, vehicle accident related,
2 but if I had to guess -- I haven't added it
3 up.
4 BY MS. MCARTHUR:
5 Q. You don't know is the answer?
6 A. I do not know.
7 MR. ROZELSKY: Object to the form.
8 BY MS. MCARTHUR:
9 Q. So this Federal court query that we're
10 looking that is Plaintiff's Exhibit Number 2, let's
11 start with October 1st, 2013 deposition, tell me
12 what that was about.
13 A. It was a two-vehicle accident in
14 Oklahoma.
15 Q. What's your role in the case?
16 A. It was an accident reconstruction and
17 associate biomechanical evaluation of the
18 accident.
19 Q. Which side retained your services?
20 A. Counsel for the trucking carrier.
21 Q. And as far as how the wreck occurred, can
22 you give me a thumbnail of that?
23 A. Two vehicles making a right turn in a
24 business district. The trailer offtracks and makes
25 sideswipe contact to two vehicles on the inside of

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1 the turn, and there was alleged injuries within the
2 passenger vehicle.
3 Q. Was your role to reconstruct the wreck?
4 A. It was. Part of it.
5 Q. Did you say that the trailer came off?
6 A. No. It just offtracked, so the trailer took
7 an -- based on the articulation of the tractor,
8 takes a narrower path than the tractor does. So it
9 moves to the right or takes a tighter radius turn
10 than the tractor. Basically made kind of a
11 sideswiping contact to the passenger vehicle.
12 Q. Is your role in that case to give an
13 opinion whether the injuries claimed were caused by
14 the impact of the wreck?
15 A. That's one of them, yes, ma'am.
16 Q. What else?
17 A. Speeds of vehicles, changes in velocity,
18 accelerations. And then subsequent to that would be
19 the injury potential thereof.
20 Q. Tell me about the 9/16/13 deposition.
21 A. That is a pseudo vehicle accident case.
22 The claim is that Mr. Courtney -- well, Mr. Courtney
23 had a rock come through the windshield of his
24 vehicle. The claim is that it came off of a dump
25 truck being driven by -- or operated by Blythe

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1 Construction and/or Blue Max. And the question is
2 whether or not the rock did, in fact, come off the
3 truck as alleged.
4 Q. And what's your role?
5 A. I was retained by counsel for Blue Max in
6 that case.
7 Q. What's your role?
8 A. To evaluate if, in fact, the rock came from
9 the vehicle as alleged or not.
10 Q. Your opinion is it did not?
11 A. Given the dynamics, that's basically my
12 opinion.
13 Q. So that was a defense case as well?
14 A. Yes, ma'am.
15 Q. Tell me about the deposition 9/10/13.
16 A. This is a pseudo, again, vehicle case:
17 Miss Barton is in her vehicle in an automatic car
18 wash, the roller brush snagged the wiper arm of the
19 vehicle she was in causing damage to her vehicle.
20 She has alleged, for one thing, that the vehicle was
21 picked up in the air three feet, swung around, and
22 the question was, from a mechanical standpoint,
23 whether that is physical possible or not given the
24 construction of the equipment; and two, whether or
25 the injuries claimed are consistent with the forces

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1 involved.
2 Q. You were retained by Magic Wand?
3 A. Better Car Wash's counsel.
4 Q. That was also a defense case?
5 A. Yes.
6 Q. Tell me about the 8/19/13 deposition.
7 A. A three-vehicle accident on I-85.
8 Mr. Coursey was killed in the accident. The counsel
9 that retained me was counsel for Heartland Express.
10 There's basically an accident reconstruction only in
11 that case assessing the accident, the dynamics of
12 the accident, perceptionary action, human factors
13 issues in regards to that accident.
14 Q. What were the -- and I don't want you to
15 get into anything other than -- what's the mechanic
16 of the accident?
17 A. The tractor trailer in this particular case
18 makes a left lane change to the right, makes contact
19 to the vehicle through its right, they end up
20 yawning into the median jersey barrier. And
21 sometime later Mr. Coursey comes along and drives
22 into the now disabled vehicle at a high rate of
23 speed, and as a result, suffered fatal injuries.
24 Q. And your thumbnail sketch of what you're
25 testifying to in that case is what?

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1 A. Essentially that, given the witnesses, the
2 evidence at hand that Mr. Coursey, as I recall, was
3 traveling at an excess rate of speed and executed no
4 perceptionary action prior to the accident, but had
5 every opportunity to have done so.
6 Q. So it's another case where you're
7 testifying as to whether Mr. Coursey could have
8 avoided the wreck?
9 A. That's certainly one aspect, yes, ma'am.
10 Q. Did any of these have anything to do with
11 anyone being on a telephone?
12 A. Not that I recall.
13 Q. On Page 1 of this testimony, do any of
14 these cases have anything to do with anyone being on
15 a telephone?
16 A. Not so far as I can recall on Page 1.
17 Q. Tell me about the deposition August 9th,
18 2013.
19 A. Vehicle versus pedestrian. It is a 26-foot
20 straight truck traveling down a highway at night.
21 There is a pedestrian off the road to the right. As
22 the truck approaches the pedestrian, which is kind
23 of right at the fog line initially, they basically
24 start to go ease over to go around. The pedestrian
25 was highly intoxicated. They stepped out into the

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1 path of the vehicle almost as if trying to thumb a
2 ride or something and was struck by the vehicle.
3 Q. And your role is what?
4 A. Reconstruction of the accident. What were
5 the speeds of the vehicle. The perceptionary action
6 of the driver, the behavior of the pedestrian, the
7 position of the pedestrian at the time of impact.
8 Q. All right. So you were retained by the
9 defendant?
10 A. In that one, yes, ma'am.
11 Q. What's the next one, the 8/1/ 2013?
12 A. That is a case involving a gentleman,
13 Mr. Cloud, who's unloading a pallet of Quikrete
14 concrete bags at the Handy Andy Store. In the
15 course of doing so, he's using a -- like a car
16 hauling trailer that has basically open floor
17 between two rails. And in the unloading process, he
18 falls from the trailer and reportedly suffers
19 injury. There's questions as to -- or allegations
20 that the operation of the forklift, which was
21 holding the bags of concrete, somehow affected him
22 and caused him to fall as opposed to him just
23 misstepping.
24 Q. What is your role in that case?
25 A. I was retained by counsel for Handy Andy.

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1 Q. And a thumbnail of what you're testifying
2 to on that is what?
3 A. That the movement of the forklift did not
4 affect Mr. Cloud's in his off loading, if you will,
5 of the product. Basically, he simply misstepped and
6 fell from the trailer. And from a biomechanical
7 standpoint that the alleged injuries -- or the fall
8 itself lacks the mechanism to cause the injury that
9 he is claiming as a result.
10 Q. Tell me about the trial July 26th, 2013.
11 A. Two-passenger vehicle. Miss Tucker struck
12 Mr. Meece in the rear. Again, sedan versus pickup
13 truck. And it was a reconstruction and a
14 biomechanical evaluation of whether or not the
15 injuries claimed by Mr. Meece were, in fact, a
16 result of the accident or not.
17 Q. You were retained by whom?
18 A. Counsel for the defense.
19 Q. What was the result of that trial?
20 A. Defense verdict.
21 Q. Tell me about 7/16/13 deposition.
22 A. One of the Mr. Stewarts is operating a
23 John Deere tractor with a flatbed of round bails of
24 hay making a left turn. Mr. Spangler is approaching
25 from the opposite direction on a motorcycle. I was

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1 retained by counsel for Mr. Stewart's defense. And
2 essentially at the time the tractor began it's left
3 turn Mr. Spangler would have been over the crest of
4 a hill out of sight -- out of the line of sight of
5 Mr. Stewart, and furthermore, Mr. Spangler's
6 reaction was not -- was highly delayed and he could
7 have given the time and distance and he could have
8 avoided the collision all together.
9 Q. Why was his reaction delayed in your
10 opinion?
11 A. Either inattention. I know that he had
12 been at a biker bar for sometime, admitting to
13 drinking, consuming some amount of alcohol prior.
14 Q. You're not a human factor's expert, are
15 you?
16 A. Certain factors, yes.
17 Q. What factors?
18 A. I mean, certainly with reconstruction the
19 studies that I've done, the research I've done,
20 would be the visual perception field. And, in fact,
21 I published a paper on visual --
22 Q. Conspicuity?
23 A. That would be -- one aspect would be
24 conspicuity, one is just the visual field of the eye
25 all together, the resolution thereof. And then with

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1 reconstruction, certainly we have to study the
2 timing of things, how long does it take to perceive
3 a certain type of hazard in a certain type of
4 situation, and then how long does it take to react,
5 you know, and things like steering, braking,
6 accelerating.
7 Q. The area of typical reaction of a driver in
8 an emergency situation, is that an area of human
9 factors that you believe that you are qualified as
10 an expert in?
11 A. Certainly some aspects of that, yes,
12 ma'am.
13 Q. Would you agree with me that Ms. Little was
14 in an emergency situation caused by the truck
15 merging into her lane where she was already in the
16 lane?
17 MR. ROZELSKY: Object to the form.
18 THE WITNESS: Certainly the lane
19 change of the truck presents a hazard to her
20 that she had to react to.
21 BY MS. MCARTHUR:
22 Q. And it was an emergency too, wasn't it?
23 A. It needed to be reacted too, yes, ma'am. I
24 don't know if I would use the word emergency, but
25 yes.

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1 Q. Why would you not use the word emergency,
2 Mr. Boguess?
3 A. Again, it's a hazard. I don't know the
4 exact definition you want to characterize emergency
5 with. I use the word -- she was presented with a
6 hazard, and the question remains as to whether or
7 not she had the opportunity to react to it.
8 Q. What's the definition of emergency? What's
9 your definition?
10 A. Again, I don't know necessarily have a
11 great definition for it. So I don't -- that's why I
12 don't use the word. She was presented with a hazard
13 and the question remain as to whether or not she
14 executed any reaction to that or what reaction she
15 did have to that hazard.
16 Q. Would you agree with me that an emergency
17 is a situation that when you're driving in -- an
18 emergency as applies to your driving, is a situation
19 wherein you must react immediately or else injury to
20 yourself or others might occur. Can you agree that
21 that's a definition of an emergency when driving?
22 A. That could be a reasonable definition.
23 Again, question is: What's immediately, what kind
24 of time -- I'm an engineer. I put numbers to
25 things. And I guess the question is:

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1 Instantaneous, you know, some amount of perception
2 reaction. What kind of time are you talking?
3 Q. You agree with me that the situation with
4 Mr. McClure coming over into Ms. Little's lane was
5 an ongoing emergency situation that didn't stop with
6 just one act, correct?
7 A. There were certainly multiple phases of the
8 contacts, yes. I mean, it's an ongoing hazard
9 situation, yes.
10 Q. It had the ongoing hazard situation created
11 by Mr. McClure merging into Ms. Little's lane while
12 she was there, had the potential for serious injury
13 or death for Ms. Little, didn't it?
14 A. It depends on what develops next.
15 Q. Do you agree with me that it had the
16 potential for serious injury or death to Ms. Little,
17 Mr. Boguess, when the truck merged into her lane
18 with her vehicle there?
19 A. A vehicle merging into another lane on the
20 highway has the potential. In this particular case,
21 we know essentially -- roughly where the vehicle
22 starts from, where it ends up. So it's not a -- for
23 something like this particular one, I would say that
24 we look at the start, the end result, and then
25 assess whether or not death or serious injury is a

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1 factor or not.
2 Q. Are you unwilling to say that when the
3 truck merged into Ms. Little's lane of travel with
4 her vehicle beside it, that that had the potential
5 for injury or death of Ms. Little? You're unwilling
6 to say that?
7 A. It has the potential. Again, any lane
8 change has that, has a potential.
9 Q. You do agree with me that there is no
10 excuse for Mr. McClure not to see Ms. Little in the
11 lane prior to his merging into the lane on top of
12 her vehicle, is there?
13 MR. ROZELSKY: Object to the form.
14 THE WITNESS: As evaluated, it seems
15 that Ms. Little was in his blind spot or
16 somewhere along the side and he missed her.
17 So, you know, again, should you see the
18 vehicle? And I say you should, yes.
19 BY MS. MCARTHUR:
20 Q. As a professional truck driver, Mr. McClure
21 is held to a higher standard of driver safety than
22 passenger car drivers on the road, is he not?
23 MR. ROZELSKY: Object to the form.
24 THE WITNESS: They certainly have
25 different licensing, yes.

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<p style="text-align: right;">Page 49</p> <p>1 BY MS. MCARTHUR:</p> <p>2 Q. He certainly is required to abide by</p> <p>3 Federal Motor Carrier regulations, isn't he?</p> <p>4 A. He would, yes.</p> <p>5 Q. Mr. McClure was not allowed to merge into a</p> <p>6 lane that was already occupied by a vehicle in that</p> <p>7 lane, was he?</p> <p>8 A. One should not do that, no.</p> <p>9 Q. Well, Mr. McClure was not allowed to merge</p> <p>10 into the lane where Ms. Little's vehicle already was</p> <p>11 there, correct?</p> <p>12 MR. ROZELSKY: Object to the form.</p> <p>13 THE WITNESS: That would be correct.</p> <p>14 BY MS. MCARTHUR:</p> <p>15 Q. And Mr. McClure -- as you recall, Mr.</p> <p>16 McClure testified even on deposition that when he</p> <p>17 started his merge that Ms. Little was not there, do</p> <p>18 you recall that?</p> <p>19 A. I believe those were his words or very</p> <p>20 similar.</p> <p>21 Q. He was adamant about that, wasn't he, that</p> <p>22 he would not even assume that Ms. Little was there</p> <p>23 when he merged into the lane she was in. Do you</p> <p>24 recall that he would not even assume that fact?</p> <p>25 A. I believe I recall that. Again, he</p>	<p style="text-align: right;">Page 51</p> <p>1 A. It is, yes.</p> <p>2 Q. That is the first piece that you're willing</p> <p>3 to say for sure hit Ms. Little's car, correct?</p> <p>4 A. That's the most forward portion on his</p> <p>5 vehicle, yes.</p> <p>6 Q. So you agree that that's what hit her car</p> <p>7 first or not?</p> <p>8 A. Yes.</p> <p>9 Q. What part of her car did it hit first?</p> <p>10 A. Given the swirl marks on the steps, it</p> <p>11 would be the wheel of her vehicle.</p> <p>12 Q. The front left wheel?</p> <p>13 A. Yes, ma'am.</p> <p>14 Q. So the step --</p> <p>15 A. The rear portion of the step, yes.</p> <p>16 Q. It would be under the passenger door of the</p> <p>17 truck, correct?</p> <p>18 A. Correct.</p> <p>19 Q. And that hit the front tire area of</p> <p>20 Ms. Little's car?</p> <p>21 A. Yes. Given the swirl marks that we see,</p> <p>22 the abrasions in the step, yes.</p> <p>23 Q. That happened while both vehicles were on</p> <p>24 the bridge, didn't it?</p> <p>25 A. Thereabouts, yes, ma'am. Yes.</p>
<p style="text-align: right;">Page 50</p> <p>1 believes that she wasn't there. He missed her.</p> <p>2 Q. Well, he would not even agree that she was</p> <p>3 there. It wasn't even a "he missed her" belief. He</p> <p>4 wouldn't assume it, would he?</p> <p>5 A. Yes. I don't believe he would.</p> <p>6 Q. Okay. But you agree with me, don't you,</p> <p>7 that when Mr. McClure merged into the right lane,</p> <p>8 Ms. Little's vehicle was there beside his truck,</p> <p>9 wasn't it?</p> <p>10 A. Yes, I believe it was.</p> <p>11 Q. In fact, the first part of his truck that</p> <p>12 hit her car was one of the wheels of his cab, wasn't</p> <p>13 it? The truck itself, not the trailer.</p> <p>14 A. I believe it was a portion of his tractor</p> <p>15 is what contacts her, yes.</p> <p>16 Q. And she didn't him, did she? He hit her.</p> <p>17 A. In the act of merging, yes.</p> <p>18 Q. Right. So in which of the -- was it the</p> <p>19 front right wheel instep there that hit</p> <p>20 Miss Little's car first?</p> <p>21 A. I definitely see the evidence of the step</p> <p>22 makes contact to her vehicle. I'm not convinced</p> <p>23 that the steer tire at this point did or did not.</p> <p>24 Q. And the step is up into the passenger</p> <p>25 component of the truck, correct?</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. And regardless of how it occurred,</p> <p>2 Ms. Little's car became entrapped under the trailer</p> <p>3 of Mr. McClure's truck, didn't it?</p> <p>4 A. Ultimately, it slid rearward along the</p> <p>5 vehicle and became caught at the rear tandems of the</p> <p>6 trailer.</p> <p>7 Q. In fact, it actually slammed with some</p> <p>8 force into the rear tandems of the trailer, didn't</p> <p>9 it, creating a lot of damage to rear of Ms. Little's</p> <p>10 vehicle?</p> <p>11 A. It certainly left rear damage to</p> <p>12 Ms. Little's vehicle as a result of that contact,</p> <p>13 yes.</p> <p>14 Q. At the point that her vehicle slammed into</p> <p>15 the rear of the trailer tires, at that point, her</p> <p>16 vehicle was caught or imprisoned or it was -- how</p> <p>17 would you say it, captured by the trailer</p> <p>18 undercarriage and the wheel there?</p> <p>19 A. It was caught up on the side of the</p> <p>20 trailer.</p> <p>21 Q. At the point that Ms. Little's car was</p> <p>22 captured by the back wheels of the trailer and the</p> <p>23 undercarriage of the trailer, there was no way for</p> <p>24 that vehicle to be steered anymore, correct, by</p> <p>25 Ms. Little?</p>

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1 A. At that point, I mean, you can still steer
2 the vehicle. I mean, you can turn the wheel
3 presumably assuming that the steering wheel is not
4 broken. You're not going to be able to steer it and
5 brake because, obviously, you're being caught from
6 the rear. It's a front-wheel drive vehicle, you may
7 be able to get some traction on the front wheels.
8 I'm not sure.
9 Q. At that point, Ms. Little's vehicle is
10 being dragged down the road by the truck, is it
11 not?
12 A. It would be, yes. Given the -- in this
13 particular accident, yes. Once it got caught up, it
14 was being dragged, yes.
15 Q. And the location where the rear of
16 Ms. Little's vehicle slammed into the tires of the
17 trailer, her vehicle and the truck were still on the
18 bridge, weren't they?
19 A. They were toward the end of the bridge, but
20 not off the bridge as I recall.
21 Q. Was Ms. Little's vehicle still on the
22 bridge at the point where her vehicle was captured
23 by the trailer or not?
24 A. As I look back at the evidence, I don't
25 recall as I sit here.

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1 Q. Well, do you have something you can look at
2 quickly and make your determination of that? If so,
3 what is it, and let's look at it.
4 A. I was going to look at the photographs
5 first from the scene and see what the evidence --
6 actually, the police photographs.
7 MR. ROZELSKY: While he's looking at
8 that, can we take a quick break so I can use
9 the restroom?
10 MS. MCARTHUR: Sure.
11 (A break was taken from 11:35 to 11:39.)
12 BY MS. MCARTHUR:
13 Q. Mr. Boggess, my question was: Didn't
14 Ms. Little's vehicle become captured by the trailer
15 at the back wheels of the truck trailer on the
16 bridge while her vehicle was still on the bridge?
17 A. Yes, ma'am, it does appear from the
18 photographs and roadway evidence.
19 Q. Tell me what the physical evidence shows as
20 far as how far the truck traveled on the bridge
21 after first striking her vehicle in her lane of
22 travel. What's the distance on the bridge from the
23 point of first impact to the end of the bridge?
24 A. I'm not sure I have a drawing with me that
25 would show that distance. I mean, it's in the

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1 drawing file that I have, but I don't have the
2 called out number to provide you as we sit here. I
3 know it's on the bridge from the photographs in the
4 drawings.
5 Q. You have another file folder of drawings
6 that's not here?
7 A. Well, you have my drawing folder, which is
8 just some basic -- is an overhead, but it's not -- I
9 don't have that dimension called out in that drawing
10 and printout. I'd have to go into the file and
11 actually physically measure and call up that
12 dimension if you want me to give you that number.
13 Q. How much do you think it is?
14 MR. ROZELSKY: Object to the form.
15 BY MS. MCARTHUR:
16 Q. You can look at the drawing file and see if
17 you give us a descent mechanical engineering
18 estimate.
19 A. The drawing that I have here, I'd say it's
20 at least -- it's better than 150 feet. But again,
21 it's not -- that's as best as I can do given the
22 drawing that I have in front of me.
23 Q. Tell me what the truck did as far as where
24 it first started pushing the car into the bridge and
25 for how long was it scraping the car alongside of

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1 the bridge?
2 MR. ROZELSKY: Object to the form.
3 THE WITNESS: Using the, I guess,
4 guardrail edge of the bridge to -- on the right
5 side just saying that they're measuring that
6 distance, it's going to be in the neighborhood
7 of 100 feet, it appears, from this drawing, but
8 I'd have to go back and look at the drawing
9 file to be sure.
10 BY MS. MCARTHUR:
11 Q. So tell me what happened from the -- after
12 the truck first hit the front left wheel of the
13 little vehicle with the step area? I'm not
14 concerned about driver maneuver at all here. What
15 was the interaction of the two vehicles with each
16 other and the bridge?
17 MR. ROZELSKY: Object to the form.
18 THE WITNESS: There is varied contact
19 along the side of the tractor trailer. So
20 there's initial contact at the step. There's
21 contact damage to the right outer axle to the
22 wheel which was replaced after the accident for
23 repair. And then there's varied marks along
24 the rubber rail or the lower rail, right rail
25 of the enclosed trailer in tow.

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1 So there's going to be multiple
2 contacts, on/off contacts as the Civic is
3 moving rearward relative to the tractor
4 trailer.
5 Again, once there's initial contact as
6 Ms. Little's indicated, she has -- she drops
7 her phone, she stops -- or she never really, I
8 guess, dynamically reacts to the accident, but
9 she is making her move, as we all know, to get
10 out of the vehicle ultimately.
11 But, you know, she's not putting any
12 inputs in, so, of course, a vehicle without
13 throttle input is going to be slowing. So her
14 vehicle is slowing. The truck is continuing to
15 go by her, and it's going to be sliding --
16 bouncing down the right side of her vehicle --
17 or his vehicle, excuse me.
18 BY MS. MCARTHUR:
19 Q. The truck is bouncing down the left side of
20 her vehicle?
21 A. She is going to be -- he's going -- given
22 his size and his merge, he's maintaining his merge
23 over because he thinks -- once he gets that contact,
24 he testifies that he thought he got bumped in the
25 rear, so ultimately continues over and then pulls

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1 off. He's basically maintains his path.
2 Her vehicle without any real input is
3 going to be sitting there kind of bouncing off
4 of his vehicle, off the guardrail, kind of in a
5 back and forth motion as it's working its way
6 down the side of the trailer relative.
7 Q. Her vehicle was dragged down the side of
8 the bridge for a distance of a 100 feet or so,
9 wasn't it?
10 A. There are some marks along the bridge over
11 distance in that neighborhood, yes.
12 Q. And there's marks on the side of her car
13 that correspond with marks on the bridge from being
14 dragged down the side of the bridge for 100 feet or
15 more, correct?
16 A. Again, there's a variation of heavy marks,
17 lighter marks, heavier marks, lighter marks as if
18 it's being kind of bounced around in that space
19 between the side of the trailer and the bridge
20 itself.
21 Q. So what's your opinion -- was it being --
22 you know, I think that you told us that her vehicle
23 had been captured by the trailer -- was at the back
24 wheels of the trailer from 100 feet from the end of
25 the bridge. That's what we were just covering.

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1 So at 100 feet, her vehicle was at the back
2 trailer tires and stopped by them, correct?
3 A. Yes.
4 Q. So, for 100 feet her vehicle is not going
5 any further back, is it?
6 A. Not relative to his vehicle, no.
7 Q. So whatever her vehicle was doing from 100
8 feet before the end of the bridge was being dictated
9 by the path of the truck, correct?
10 A. It was.
11 Q. The truck was --
12 A. Generally speaking.
13 Q. -- even with her trapped there under the
14 undercarriage of its trailer was continuing to make
15 his merge into Ms. Little's lane, wasn't it?
16 A. To some degree, yes.
17 Q. And further compressing her car into the
18 bridge side, at the bridge -- the side of the bridge
19 wasn't it? That's where -- I mean, that's where the
20 marks -- 100 feet out is where the marks on the side
21 of the bridge show that her car is being scraped
22 along the side of the bridge, doesn't it?
23 A. Realistically for the last 100 feet,
24 there's not -- his trailer is generally almost all
25 the way over. There may be some slight movements,

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1 but it's more just the two vehicles moving. And
2 because of the positioning, her vehicle is being
3 pulled and rubbed against the concrete edge, kind of
4 the curb edge of the rail.
5 Q. Let me ask you to assume that according to
6 Mr. Hunter's testimony that the -- that he and
7 Ms. Little entered from the Spring Street entrance
8 ramp onto I-16, remained in the right lane, and that
9 as they were approaching and coming on to the bridge
10 area that Mr. McClure's truck overtook them and that
11 he -- he passed Mr. Hunter and he overtook
12 Ms. Little, according to his testimony, and -- are you
13 getting out his affidavit?
14 A. His affidavit, yes, ma'am.
15 Q. Right. And that it was at the point where
16 he was passing Ms. Little that he began his merge
17 into her lane. Can you assume that?
18 A. Okay.
19 Q. That's what Mr. Hunter said; isn't it?
20 A. Generally.
21 Q. It was Mr. Hunter's impression that
22 Ms. Little was being passed by the truck at the time
23 the truck began to merge into her lane, correct?
24 A. Again, he says that the truck passed me and
25 then when it was beside the Honda Civic, its right

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1 turn signal was turned on to move into our lane and
2 it proceeded to move over.
3 Q. So it was his impression the truck was
4 passing Ms. Little -- it had just passed him and was
5 passing Ms. Little at the time it began to move
6 over, correct?
7 MR. ROZELSKY: Object to the form.
8 BY MS. MCARTHUR:
9 Q. Into Ms. Little's lane.
10 A. I don't know if it was continuing to pass,
11 but it had moved up along the certainly.
12 Q. Having just passed Mr. Hunter and with
13 Ms. Little, do you agree that Ms. Little was
14 directly ahead of Mr. Hunter in the lane of
15 travel?
16 A. It would seem that way, yes.
17 Q. And having just passed Mr. Hunter and with
18 Ms. Little being the next car ahead of Mr. Hunter,
19 there's no excuse at all for Mr. McClure not knowing
20 that Ms. Little's vehicle was there in the right
21 lane, was there?
22 A. It depends on all the timing. Again, he
23 should be able to see -- or should see a vehicle
24 beside him. I mean, we've talked about that. I
25 mean, there are reasons as you back up to the merge

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1 and the gore point for the on ramp as to why he may
2 have missed her, but, I mean, ultimately, she was
3 beside him when he started merging over.
4 Q. Well, I mean, the fact is that as he was
5 coming up beside Mr. Hunter and coming up beside --
6 I mean, the testimony of Mr. Hunter is the truck
7 came up beside him and then went up beside
8 Ms. Hunter, not that he and Ms. Little came up
9 beside the truck, correct? That's what Mr. Hunter
10 says, that the truck came up beside them, passing
11 them in the last lane, correct?
12 MR. ROZELSKY: Object to the form.
13 THE WITNESS: He indicates that they
14 came in the right lane and the truck passed
15 him. As far as -- we know that the on ramp has
16 to merge into a parallel lane to the right of
17 them.
18 BY MS. MCARTHUR:
19 Q. He says after we were on I-16, a tractor
20 trailer was traveling faster than we were and
21 overtook us in the left of I-16 beside it. The
22 truck passed me and then, when it was beside the
23 Honda Civic -- so that's his testimony is. The
24 truck overtook him and then overtook Ms. Little,
25 correct?

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1 MR. ROZELSKY: Object to the form.
2 THE WITNESS: Yes, it would have to.
3 BY MS. MCARTHUR:
4 Q. All right. So assuming that that's
5 Mr. Hunter's testimony, Ms. Little would have been
6 in plain view for Mr. McClure to see as he was
7 overtaking Mr. Hunter, wouldn't she?
8 A. She would have been forward of the Charger,
9 which she was in, and to his right.
10 Q. Ms. Little was not in his blind spot at all
11 as Mr. McClure was passing Mr. Hunter, was she?
12 A. The placement articulated from this
13 affidavit is not 100 percent clear. Again, when is
14 he saying he's on I-16? Is it on the ramp when the
15 ramp was still merging in? How far over was the
16 Civic and the Charger at the time? Was it
17 immediately beside? Was there some distance between
18 them as they're coming together? I don't know.
19 Q. Mr. Boggess, this says: "After we were on
20 I-16, the tractor trailer was traveling faster than
21 we were and overtook us in the left lane of I-16
22 beside us." He's not talking about the ramp. He's
23 on I-16, and the truck overtook them traveling
24 faster than they were beside them. Did he not say
25 that in his affidavit?

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1 MR. ROZELSKY: Object to the form.
2 THE WITNESS: Those are basically the
3 words, yes.
4 BY MS. MCARTHUR:
5 Q. Right. And the truck then passed him,
6 correct?
7 A. He said: "The truck passed me."
8 Q. All right. So at the point where the truck
9 is passing Mr. Hunter, Ms. Little is in plain view
10 of the truck, isn't she?
11 MR. ROZELSKY: Object to the form.
12 THE WITNESS: If they're already on
13 I-16 established in the lane, then yes. If
14 we're back in the merged area -- and the
15 question is, what is on I-16? Is it when he
16 turns onto the ramp? Is he halfway down the
17 ramp? Is he at the gore point? It's not
18 clear.
19 BY MS. MCARTHUR:
20 Q. He said he's on I-16. He doesn't say he's
21 on the ramp, doesn't he?
22 A. He says on I-16. The ramp is - I mean, the
23 ramp itself, as I understand, is controlled by the
24 same highway and it would be part of I-16. It
25 doesn't put an X on the spot, so...

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1 Q. What he describes is the truck overtaking
2 them and being beside him as he's being overtaken,
3 correct?
4 A. He says beside, yes. Doesn't say how far
5 beside, but beside, yes.
6 Q. And the truck is going faster than he is
7 according to his testimony, correct?
8 A. At that time, yes. But both the Civic and
9 the Charger are merging in, so -- and they're going
10 to be accelerating down the on ramp, so, again,
11 maybe they caught up to him and they matched speeds
12 by the time this happens. I'm not sure.
13 Q. That's not what Mr. Hunter says, is it?
14 That's just what you're supposing, isn't it?
15 A. He says the truck passed him, and then when
16 it was beside the Honda, its right turn signal was
17 on. It's never articulated as to, was the truck
18 continually passing the Civic and to what degree?
19 Q. He says: "I was traveling at about 50 or
20 55 miles an hour, a safe distance behind the Honda
21 Civic. After we were on I-16, a tractor trailer was
22 traveling faster than we were and overtook us in the
23 left lane of I-16 beside us. The truck passed me
24 and then when it was beside the Honda Civic, its
25 right signal was turned to move into our lane and

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1 proceeded to move over." That's what he said, isn't
2 it?
3 A. Yes. You just read the affidavit, yes,
4 ma'am.
5 Q. So there was no obstruction to
6 Mr. McClure's view of Ms. Little's vehicle that you
7 know of, was there?
8 A. Other than what his mirrors can or can't
9 show, no.
10 Q. Other than what?
11 A. What his mirrors and/or his vehicle
12 obstruction would offer, no.
13 Q. I mean, he's looking out his windshield as
14 he's passing Mr. Hunter's vehicle, and Ms. Little
15 was ahead of Mr. Hunter, so she would have been in
16 plain view the right lane, would she not?
17 A. At some point, I mean, according to this,
18 he came up and would have moved passed them. So at
19 some point he could have looked over to the right.
20 Again, it would have been back on the ramp with some
21 separation. It would have been right there in the
22 immediate lane. I don't know. But she would have
23 over there and could have been seen.
24 Q. Will you agree with me that Ms. Little was
25 in plain view of Mr. McClure as he was approaching

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1 Mr. Hunter and Ms. Little's vehicle from the rear?
2 A. Can you restate that, please?
3 Q. Can you agree with me that Ms. Little's
4 vehicle was in plain view of Mr. McClure as he was a
5 approaching Mr. Hunter's vehicle from the rear to
6 pass Mr. Hunter?
7 A. She would have been at some position
8 pulling to the right, yes. He could have reasonably
9 seen the Civic.
10 Q. And he should have seen her since he was
11 intending to do merge into that lane, shouldn't
12 he?
13 A. At some point, he should have seen the
14 Civic which was beside him at the time he merged,
15 yes.
16 Q. He should have seen Ms. Little's vehicle as
17 he was coming up on her, according to Mr. Hunter's
18 testimony, as he did, that he was coming up beside
19 her. She didn't come up beside him, according
20 Mr. Hunter, did she?
21 MR. ROZELSKY: Object to the form of
22 the question.
23 THE WITNESS: Not according
24 Mr. Hunter.
25 BY MS. MCARTHUR:

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1 Q. Do you dispute Mr. Hunter's testimony?
2 A. There's questions in terms -- as we were
3 just talking about clarifying some point, but I
4 don't dispute it, per se.
5 Q. I mean, do you find the physical evidence
6 to be different from what Mr. Hunter said? I mean,
7 do you think his rendition of the facts is
8 incorrect? Are you going to testify that he's
9 wrong?
10 MR. ROZELSKY: Object to the form of
11 the question.
12 THE WITNESS: I don't believe I find
13 anything wrong with his testimony. There are
14 some gaps and some clarification that is not in
15 here.
16 BY MS. MCARTHUR:
17 Q. Tell me the things you need to know from
18 Mr. Hunter.
19 A. Again, as we've just talked about: Was he
20 established in his lane? Where was he relative to
21 the Gore Point, the bridge when this supposedly
22 transpired? Was it at the merge -- were they still
23 in the process of merging? Were they already
24 established? Was it only three lanes at this point?
25 Those types of variables.

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1 Q. So it's clear from Mr. Hunter, Ms. Little
2 did not come from behind and overtake the truck.
3 A. He certainly does not say that, no.
4 Q. And you don't have the opinion that
5 Ms. Little came from behind and overtook the truck,
6 do you?
7 A. Not in the manner of, you know, zipping in
8 and out of traffic and rapidly accelerating up. We
9 know that from Mr. Hunter's testimony and
10 Ms. Little's testimony that -- Ms. Little's
11 testifies that she's alongside the trailer, and we
12 know -- at the time that he starts to merge, and
13 furthermore that the first contact point was closer
14 up to the tractor. So for some amount of time
15 during the merge, there is a differential speed
16 whereas the Civic has to catch up relative to the
17 truck to some degree.
18 Q. What do you mean when you say "catch up?"
19 A. Well, their relative positions have to
20 shift so that the Honda comes further forward
21 relative to the tractor trailer, the side of the
22 tractor trailer.
23 Q. Why is that?
24 A. Well, for one, again, Mr. Hunter places the
25 two vehicles beside each other. "The truck passed

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1 me when it was beside the Civic. His right turn
2 signals was turned on and started to move over." So
3 they are together. They're beside each other when
4 the merge begins.
5 Ms. Little is very clear in her testimony
6 referring to the rectangle marker light on the side
7 of the trailer that she's looking at this turn
8 signal that gets activated.
9 If that's the case, she sees that and then
10 it starts to merge, and we know the contact is
11 further up on the vehicle, either she has to have
12 more speed and kind of catch up or move past him in
13 the process of the merge, the truck has to slow
14 whether that be letting off the gas or some
15 combination thereof.
16 Q. Or it could be that she was wrong as to
17 when she first perceived him coming into her lane as
18 far as where she was on the road, correct?
19 MR. ROZELSKY: Object to the form.
20 BY MS. MCARTHUR:
21 Q. I mean, that's an optical --
22 A. I think she makes it pretty clear in her
23 testimony that she sees and even clarifies the big
24 rectangular marker like flashing right beside her.
25 That's what she saw. It's not, I was somewhere

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1 along truck, I think it was there. She was very
2 clear, in my opinion, in her testimony as to what
3 she saw.
4 Q. Well, she may have been, but you understand
5 about witness memory and wrecks, that witnesses and
6 individuals in wrecks are wrong all the time about
7 where they saw what and what happened, aren't
8 they?
9 MR. ROZELSKY: Object to the form.
10 THE WITNESS: Sometimes distance
11 things would be difficult, but again, once that
12 initial contact which we've discussed was at
13 the front of the tractor, that -- once that
14 transpires, it's no longer the truck is
15 merging. It's already hitting you.
16 BY MS. MCARTHUR:
17 Q. Right.
18 A. It's pretty clear to me that she says, "I
19 saw the turn signal come on, which is that big
20 flashing beacon on the side of the trailer, and she
21 was very clear as to what she was looking at. Once
22 she's been hit and then sliding -- she hits the left
23 side of the cab, the drive wheel had been sliding
24 down along the side of the trailer, then the -- you
25 know, her recollection of seeing certain spots on

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1 the trailer is probably over and she's already doing
2 other things within her vehicle, making the decision
3 to get out, to jump as, she did, or other things.
4 Furthermore, as her vehicle slides by the
5 vehicle, that turn signal is taken out, so the very
6 turn signal that she very vividly recalls as having
7 been flashing.
8 Q. Mr. Boggess, Mr. Hunter never indicated
9 that either he or Ms. Little sped up, did he?
10 MR. ROZELSKY: Object to the form.
11 THE WITNESS: Neither one did, no.
12 BY MS. MCARTHUR:
13 Q. Right. Ms. Little said she didn't speed
14 up, didn't she?
15 A. She did not change her behavior. Did not
16 try to accelerate out from underneath, no, or brake
17 or steer.
18 Q. Mr. Hunter's description of what happened
19 is the truck was -- overtook him and then overtook
20 Ms. Little and then merged into her, isn't that
21 exactly what he said?
22 MR. ROZELSKY: Object to the form.
23 THE WITNESS: No, that's not exactly
24 what he said. We read it several times. He
25 said it passed her -- or passed him. The truck

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1 passed the Charger that Mr. Hunter was in. And
2 then when it was beside the Civic, its right
3 turn signal was turned on to move into our
4 lane.
5 BY MS. MCARTHUR:
6 Q. Right. So the indication from Mr. Hunter
7 is that the truck was continuing to move faster than
8 he and Mr. Little were, correct -- and Ms. Little
9 were, correct? That's what he says.
10 A. It said it passed him, and then when it was
11 beside the Civic, his right turn signal was turned
12 on to move in. It doesn't say that it's continually
13 moving past, it's braking, slowing or otherwise.
14 I mean, at this point, he's coming off the
15 ramp. He's going to be making turn. Has he let off
16 the throttle and has a dragging -- you know, the
17 rolling resistance dragging is slowing him slightly,
18 don't know. Is Ms. Little continuously accelerating
19 as she is now shortly off the on ramp and just kind
20 of getting to speed, it's unknown.
21 We know that from her testimony that she
22 was looking at the turn signal of the trailer.
23 She's abreast of the trailer when he starts to
24 merge, and we know where the contact is at the
25 forward part of the tractor.

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1 Q. You're really hanging your hat on the turn
2 signal, aren't you, as far as to say she was going
3 faster than the truck?
4 MR. ROZELSKY: Object to the form.
5 THE WITNESS: For some short time that
6 certainly factors in. I mean, the Civic --
7 Mr. Hunter places them alongside each other.
8 He doesn't articulate exactly the relative
9 positions.
10 BY MS. MCARTHUR:
11 Q. Mr. Boggess, this wreck was not
12 Ms. Little's fault, was it?
13 MR. ROZELSKY: Object to the form.
14 BY MS. MCARTHUR:
15 Q. It wasn't, was it?
16 A. It wasn't necessarily initiated by her.
17 She certainly could have done things to avoid it, as
18 I outline in my report.
19 Q. Well, this wreck was caused because
20 Mr. McClure merged into the right lane where
21 Ms. Little's vehicle already was, correct?
22 A. As I said, it was initiated by that, yes.
23 Q. And Mr. McClure is not allowed to merge
24 into a lane where a car is already there, is he, by
25 the rules of the road and by general driver safety,

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1 is he?
2 MR. ROZELSKY: Object to the form.
3 THE WITNESS: No more than any vehicle
4 is allowed to merge into another.
5 BY MS. MCARTHUR:
6 Q. And he merged right into a lane where
7 another vehicle was and merged right on top of that
8 vehicle, didn't he?
9 A. He merged into the side -- seemly merged
10 into the side of the Civic, yes.
11 Q. And then he continued his merge and dragged
12 that vehicle some 735 feet, didn't he?
13 A. He drug it for some distance, yes.
14 Q. Have you attempted to put a speed on him to
15 the point where he's dragging that vehicle to get to
16 that kind of stop?
17 A. He's testified that he wasn't in a panic
18 maneuver. He thought he had been contacted in the
19 rear and was trying to get over the shoulder. He
20 certainly does not know that she's hung up under the
21 wheels -- or the Civic is hung up under the wheels
22 of his vehicle.
23 Q. How do you know that?
24 A. In the testimony -- well, from his
25 testimony, his reaction. I mean, I think if he knew

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1 that there was a vehicle caught underneath him, I
2 think you're going to stop fairly quickly and not
3 continue to drag a vehicle.
4 But that aside, I mean in terms of the
5 speed, Mr. Hunter says he was traveling 50 to 55 and
6 the truck moved past him. No one -- no evidence
7 that I've seen from any of the witnesses, any of the
8 drivers have said that the tractor trailer was
9 moving at some aggressive speed past. There was
10 some relative movements of the vehicles.
11 Q. Mr. Hunter said 60 to 65. Assuming that
12 the summary attached -- that the truck is going 60
13 or 65 miles per hour --
14 MR. ROZELSKY: I'm going to object,
15 first of all, to the fact that you're going
16 back and forth between an affidavit where
17 you're referring to his testimony.
18 If you're summary to a summary of a
19 statement and you want to tell the witness that
20 you got a summary that he's not been provided,
21 then let him know where you think that
22 testimony comes from, please.
23 BY MS. MCARTHUR:
24 Q. Let me ask you to assume that Mr. Hunter
25 will say that the truck was going 60 to 65 as he

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1 passed him and Ms. Little?
2 A. Okay. I can assume that.
3 Q. Is there any inconsistent with that in the
4 physical evidence that you've seen?
5 A. I mean, again, it would be -- it's a number
6 and it's an estimate. I mean, as we just talked
7 about. People's --
8 Q. The question was: Is there anything
9 inconsistent with that estimated speed of 60 to 65
10 of the truck based on the physical evidence?
11 MR. ROZELSKY: Object to the form.
12 THE WITNESS: Given the physical and
13 the witness evidence, yes. Because given the
14 position of Ms. Little's vehicle along the side
15 of the trailer and the ultimate point of
16 contact that would then suggest that the Civic
17 has to be going even hire to get up to the
18 position of initial contact.
19 Q. Well, that's if it is correct what
20 Ms. Little said about where it was when the struck
21 came over and hit her vehicle, correct?
22 MR. ROZELSKY: Object to the form.
23 THE WITNESS: So using your assumption
24 and the -- I am, I guess, assuming that your
25 client, Miss Little, does in fact recall the

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1 accident. But, again, she was very vivid that
2 she's looking at that light. She sees that
3 light. She's abreast of the trailer.
4 Mr. Hunter places the vehicles beside
5 one another, so I think it's certainly
6 reasonable to conclude that they were beside
7 each other.
8 BY MS. MCARTHUR:
9 Q. I didn't ask that.
10 A. Okay. Would you like to reask the question
11 and I'll do my best to answer. I thought I was
12 answering your question.
13 Q. I'll tell you what, let's go on and go
14 through these depositions some more.
15 A. Okay.
16 Q. Let's go to the June 17, 2013 deposition.
17 You know what I want to know when I ask you these:
18 I want to know what your role was, who retained you
19 and a thumbnail what you said.
20 A. Okay. The Nicol v. Del Cook, et al. vs.
21 The United States, it is a three-vehicle accident.
22 The van is going one direction, which is outfitted
23 for the military, a military contractor operated by
24 Ms. Del Cool, whose counsel retained myself, or SEA.
25 The Nicol vehicle was traveling in the opposite

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1 direction. Miss Cook's vehicle, right side wheels
2 went off the edge of the pavement which had a
3 excessively high -- I believe an eight- or nine-inch
4 edge drop. When she tried to reenter the road lost
5 control of the vehicle, the tractor crossed the road
6 and went head to head with Mr. Nicols vehicle
7 resulting in fatal injuries. The United States was
8 brought in as a third party because they were -- it
9 was a military roadway and they were responsible for
10 maintaining that roadway which had an excessive edge
11 drop.
12 Q. And your role was to say what?
13 A. Reconstruct the accident, the speeds,
14 timings of the vehicles, as well as assess the
15 affect of the edge drop leading to the out of
16 control of the vehicle, and also the vehicle
17 dynamics itself. The vehicle as constructed had
18 issues with its center of gravity and roll
19 tendency.
20 Q. Which vehicle?
21 A. The van operated by Del Cook.
22 Q. Okay. So you were defending the Del Cook
23 van?
24 A. Yes, essentially.
25 Q. What about the 4/5/2013 deposition?

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1 A. As I recall that is a passenger vehicle
2 versus a bicyclist accident. The differential --
3 Mr. Wilke was struck by the pick-up truck operated
4 by the employee, I believe, of Douglas Electric. I
5 was hired by counsel for Douglas Electric.
6 Mr. Wilke contends that he was traveling on the
7 right side of the roadway when the truck came up
8 from behind him and struck him. Douglas Electric
9 contends that the bicyclist crossed over the roadway
10 in front of his vehicle and basically pulled out in
11 front of him in his truck. The evidence suggested
12 that the vehicle was moving from right to left
13 laterally across the path, and furthermore Mr. Wilke
14 was -- I believe had been consuming alcohol.
15 There's question of what was his alcohol impairment.
16 He had very significant lower extremity injury, and
17 basically was taken home, as he testified, laid on
18 his kitchen floor for the next 36 hours without
19 seeking medical attention.
20 Q. All right. What's the next one, the
21 3/15/13 deposition?
22 A. I believe that is a three-vehicle chain
23 reaction accident. Mr. Witt was in the -- I'm
24 sorry, in the middle vehicle of three, Rowland
25 Transport. Contacted the rear of Mr. Wood's



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1 vehicle, propelling forward into the forward
2 vehicle. It was an accident reconstruction and
3 biomechanics as to the alleged injuries of Mr. Witt.
4 Q. Retained by Rowland Transportation?
5 A. Counsel for, yes.
6 Q. 3/7/13?
7 A. This was actually a plumbing related
8 matter.
9 Q. Plumbing?
10 A. Plumbing. There was a -- I'm trying to
11 think. I think it was an expansion tank on a water
12 heater that failed on the fourth floor of the
13 medical plaza that caused flooding or damage. It
14 was a mechanical evaluation on the plumbing
15 system.
16 Q. And on whose behalf?
17 A. The general contractor.
18 Q. Which? Is that McDonald?
19 A. Them or one of the other et. al.s, defense,
20 yes.
21 Q. Okay. 3/4/13?
22 A. As I recall two-vehicle impact. Hired by
23 defense. Accident reconstruction, biomechanics as
24 to the alleged injuries.
25 Q. Perception reaction time involved at all?

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1 A. Not that I recall.
2 Q. Tell me about the trial 2/14/13.
3 A. Two-vehicle rear impact Miss Vasquez was
4 operating a SUV, employee of Advanced Stores, which
5 counsel retained me for them, had made contact to
6 the rear of her vehicle. Accident reconstruction
7 and biomechanics as to the alleged injuries.
8 Q. Your opinion was that the injuries were not
9 caused by the wreck?
10 A. Generally speaking, yes.
11 Q. Tell me about the 1/31/13 deposition?
12 A. I'm going to have to go back and say that
13 the case I told you about, McGomery Mutual vs.
14 McDonald York, the description I gave you was
15 actually that case. I was hired by counsel for
16 Shelco on that case.
17 Q. Okay.
18 A. Going back up to 3/7, I don't recall the
19 specifics of that case.
20 Q. Okay.
21 A. Obviously, because I crossed them off.
22 Q. Tell me about 1/16/13?
23 A. Counsel for George Power retained me. It
24 was a passenger vehicle versus a pedestrian. It was
25 I believe an early morning 6:00 a.m., certainly

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1 pre-sunrise accident. Mr. Boyd reportedly stepped
2 off and tried to cross on a dark unlit highway. The
3 vehicle operated by George Power struck and killed
4 Mr. Boyd. Questions in that case were contribution
5 issues, which I was not in, but I did the
6 biomechanics, so how was Mr. Boyd positioned, where
7 was he, and then given variations in perception
8 reaction, and speed other variables because he we
9 had the ECM data from the George Power vehicle
10 assessing the dynamics of the vehicle. Would speed
11 have changed anything with regards to the accident
12 or not.
13 Q. Okay. Let's go to Page 2?
14 A. Okay.
15 Q. Tell me about the 1/3/13 deposition.
16 A. Two-vehicle accident. The Collum's Lumber
17 truck is forward of Brabham vehicle. The Collum's
18 Lumber truck was attempting to back up and made
19 contact to the Brabham vehicle. I was retained by
20 counsel for Collum's Lumber in accident
21 reconstruction and biomechanics relative to alleged
22 injuries.
23 Q. Okay. Tell me about December 10, 2012.
24 A. Retained by counsel for Biltmore Forest
25 Club. There was an employee who had left work. A

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1 personal vehicle pulls out of a parking lot, is
2 struck in the side by a bicyclist, Mr. Smith. The
3 questions in that case were speeds of both -- or
4 realistically the speed both vehicles, specifically
5 the bicyclist. Was on a downhill. There was video
6 surveillance, there was video analysis, it was
7 perception reaction, it was speed related issues.
8 Q. Tell me about the 11/27/2012 deposition.
9 A. Two-vehicle nighttime accident. The Dean's
10 vehicle is making a left turn from a turn lane into
11 a drive. Miss Mosley is coming up in the right
12 adjacent lane, ends up -- as the Dean's vehicle is
13 making a left. I was hired by their counsel. She
14 clips the rear end of the trailer in tow in the
15 course of its turning and suffered fatal injuries.
16 Q. You were retained by Dean's?
17 A. I was.
18 Q. I know about the Middlebrooks case.
19 A. Yes, ma'am.
20 Q. What about the 10/17/12?
21 A. I remember the name of the case, but I
22 don't remember the specifics of it.
23 Q. Do you know which part of your testimony
24 was retained for?
25 A. I believe counsel for Fairfield Trucking.



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<p style="text-align: right;">Page 85</p> <p>1 Q. What about the Stephens vs. KAM Trucking 2 case? 3 A. I would say again I don't recall the 4 specifics. I believe I was retained by counsel for 5 the KAM Trucking. 6 Q. Blakemore vs. Estes Express Lines? 7 A. Retained by counsel for Estes Express 8 Lines. It was a -- Blakemore was operating a 9 commercial vehicle. Rear impacted the rear of the 10 Estes vehicle, as I recall. So it was an accident 11 reconstruction in that particular case. 12 Q. Tell me about the Franklin vs. Perry and 13 Mitchell. 14 A. I don't recall the specifics as we sit 15 here. 16 Q. Do you know which party you were retained 17 by? 18 A. I do not. 19 Q. Tell me about Campbell v. Arch Aluminum & 20 Glass? 21 A. Work place accident. Miss Campbell was 22 aiding co-workers and unloading a crate of large 23 glass panels. They were using a cart to kind of 24 role them into the facility. The cart overturned 25 and caused crushing injuries to her. The questions</p>	<p style="text-align: right;">Page 87</p> <p>1 in line. Gotthold Jordan was getting on the highway 2 with a load that had shifted on the on ramp -- or 3 shortly after loading before he got to the on ramp, 4 as I recall. The load was hanging off the side. He 5 decided to still enter the highway. The Velez 6 vehicle was following the Van Hoose vehicle on to 7 the highway, and then -- I'm sorry the Gotthold 8 Jordan vehicle on to the highway. And then the Van 9 Hoose vehicle came along rear impacting Velez 10 shoving him into Gotthold Jordan. Mr. Van Hoose 11 sustained injury. So that's the general on that 12 case. 13 Q. So the Velez was a defendant in the first 14 case there? 15 A. Yes, and a plaintiff in the second one. 16 Q. And your testimony was that the wreck was 17 caused by whom? 18 A. The Gotthold Jordan -- the on ramp was over 19 three-tenths of a mile, as I recall, and it's on a 20 downgrade so you had clear visibility of the 21 vehicles coming in which were obviously slower than 22 highway speeds as they're merging in, so my 23 testimony was that Mr. Van Hoose essentially had 24 ample time for perception reaction to the accident. 25 Gotthold Jordan had an improper load securement,</p>
<p style="text-align: right;">Page 86</p> <p>1 were -- I testified about the -- the defense party 2 that I was retained by had the delivered the 3 product, and then the work site was using their own 4 carts to transport it, so the question is whether or 5 not the load had technically been delivered and 6 still under the control of delivering company, and 7 also the appropriateness of the cart. The cart was 8 custom by them. Not by the delivery company, but my 9 the employer of Miss Campbell and was very unstable 10 given the loads they were using. 11 Q. So you were defending the company that 12 delivered the material? 13 A. Yes, ma'am. 14 Q. What about Anderson vs. Littlefield? 15 A. I do not recall the specifics on that one. 16 Q. Do you not recall which party you were 17 retained by? 18 A. I do not, no, ma'am. 19 Q. Tell me about Van Hosse v. Gotthold Jordan. 20 A. Gotthold Jordan, yes, ma'am. The next two 21 are the same case. I was retained by counsel for 22 Velez, which is the plaintiff in the second case 23 there. And it would have been a co-defendant in the 24 first one, with Gotthold Jordan. It was three 25 commercial vehicles, Van Hoose was the third vehicle</p>	<p style="text-align: right;">Page 88</p> <p>1 should not have attempted to enter the highway, and 2 further that Mr. Van Hoose was not wearing his seat 3 belt at the time of the accident and that was a 4 direct cause of the injury that he -- the biggest 5 injury that he sustained, which was that he struck 6 his face in the interior of the cab blinding himself 7 in one eye. 8 Q. Were you initially retained -- is Velez a 9 person's name or is that a company? 10 A. I believe it was a name. 11 Q. Were you retained to defend the Van Hoose 12 case first? 13 A. I believe I was retained sometime in 2011 14 after both were pending. So all of them were going 15 on, I think, at the time I brought into the case. 16 Q. Tell me about Warnick vs. Marriott? 17 A. Premises liability to Marriott Hotel. I 18 was working for counsel on behalf of Marriott 19 Hotels. Mr. Warnick claimed to have sustained a 20 personal injury while on the premises of Marriott 21 property. 22 Q. Okay. What about Sparks v. Jason Groves? 23 A. Counsel for Mr. Sparks, as plaintiff. He 24 was rear impacted by Mr. Groves' vehicle and 25 sustained injury as a result. I testified that</p>

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<p style="text-align: right;">Page 89</p> <p>1 Mr. Groves did not execute proper perception 2 reaction in that particular and should have not 3 struck Mr. Sparks as he did. 4 Q. What type of maneuver was it? 5 A. Straight line braking. 6 Q. Straight line braking? 7 A. Should have braked and did not. 8 Q. So is it a perception reaction case? 9 A. It was. It was certainly one aspect of 10 it. 11 Q. What was the result of that trial? 12 A. It was contributory negligence on both 13 parts. I don't remember the split. 14 Q. Tell me about Owens. 15 A. The next four are the same deposition. It 16 was multiple plaintiffs Owens, Grady and Knott 17 against a boat manufacturer and Marine East as a 18 supplier of parts. I was retained by counsel for 19 Marine East. 20 Q. Did you say it was a fire? 21 A. No. It was a boat that the plaintiffs 22 sustained personal injury on the boats. 23 Q. It was a boat accident? 24 A. Yes. 25 Q. Okay.</p>	<p style="text-align: right;">Page 91</p> <p>1 design of the equipment itself and the 2 appropriateness or applicability of safety 3 standards. 4 Q. Okay. Tell me about Kaylor. 5 A. That was a property case. Mr. Kaylor, as I 6 recall, had filed charges -- or filed suit against 7 Mr. Chrisco. It was over -- I believe Mr. Chrisco 8 had done some engine work for a performance vehicle 9 of his. Mr. Kaylor subsequently blew up that engine 10 in use and said that there was defects with regards 11 to the engine construction by Mr. Chrisco. 12 Q. Whose side were you on? 13 A. I was hired by counsel for Mr. Chrisco. 14 Q. Tell me about the Bowerman Case. 15 A. This is a case Miss Bowerman pulled out 16 from a stop sign crossing over a roadway -- I'm 17 sorry. I'll back that up. 18 Mr. Bowerman was driving down a roadway 19 when a vehicle from her left had pulled out from the 20 stop sign and struck her in the side and killed her. 21 The vehicle was technically owned by Crawford 22 Roofing. It was actually the daughter of the owner 23 that was driving the vehicle. And there was 24 perception reaction questions. There was 25 allegations that the driver was on her cell phone.</p>
<p style="text-align: right;">Page 90</p> <p>1 A. As due to an alleged product issue with one 2 of the parts on the boat. 3 Q. Okay. Rose Acre Farms? 4 A. That is a HVAC case, H-V-A-C. There was 5 pneumonia leak at the Rose Acre Farms. I was hired 6 for counsel for Rose Acre Farms. There was a 7 pneumonia cooling system put in by Vilter, or 8 supplied by Vilter and caused a leak and damage to a 9 large amount of the product. 10 Q. It's a property damage case? 11 A. It was. 12 Q. All right. Butler v. Oerlikon? 13 A. Backing up there, I think there was some 14 minor exposure injuries, but I think the primary 15 focus of that was property damage. 16 Q. Okay. 17 A. Butler v. Oerlikon, as you just asked, that 18 was -- I was hired by counsel for Oerlikon, Neumag. 19 It was a workplace accident. Miss Butler suffered 20 fatal injuries with a piece of equipment. Oerlikon, 21 I guess, supplied this particular equipment or it 22 had been purchased from them some 40 or 45 years 23 prior and there was questions with regards to the 24 manner in which the accident happened, so I was 25 using biomechanics for that and then the mechanical</p>	<p style="text-align: right;">Page 92</p> <p>1 Q. Which one? 2 A. The driver. Not Miss Bowerman, the -- 3 Q. The Crawford Roofing daughter? 4 A. Yes. Her name escapes me. 5 Q. You were retained by? 6 A. Counsel for defense. 7 Q. Did you testify about cell phone use in 8 that case? 9 A. To some degree, yes, ma'am. 10 Q. What did you testify about that? 11 A. One of the things we were asked to do in 12 that particular case was to go through the cell 13 phone records. Miss -- again, the daughter -- her 14 name escapes me -- that was driving the Crawford 15 Roofing vehicle had testified as to her location 16 over the preceding five to ten minutes, and what she 17 was doing. She had apparently been texting some 18 friends. She claims that she was not on the phone 19 at the time of the accident and had put the phone 20 down, so some of the stuff we did was essentially 21 lay out in time -- time and distance and articulate 22 to see if her account of where she was when she was 23 sending text messages lined up with typical travel 24 through through the residential area that she had 25 been traveling through the preceding several</p>

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1 minutes, and whether or not the record did or did
2 not show that she was actually on her phone when she
3 had pulled out from the stop sign.
4 Q. So it was -- your work supported that she
5 was not on the phone at the time?
6 A. From the cell phone records, there was no
7 evidence that she was on her phone at the -- I think
8 the minute, minute and-a-half preceding the actual
9 accident.
10 Q. Have you been provided the 911 record for
11 this wreck?
12 A. I don't believe I've seen that, no.
13 Q. Have you been provided Mr. McClure's cell
14 phone record for this wreck?
15 A. No, I don't believe I have.
16 Q. It might been attached to his deposition,
17 but I'm not sure about that, as an exhibit.
18 A. I have his deposition transcript, but not
19 his exhibits in my file at least at this point.
20 Q. Have you formed an opinion that Mr. McClure
21 was or was not on the cell phone talking at the time
22 of this wreck?
23 A. I have not been asked to do that in this
24 case. I mean, I've seen his testimony that he had
25 set the headset down, but that's really the extent

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1 of my understanding of it.
2 Q. And you've not been shown his cell phone
3 record that reflects that he may have been on in
4 excess of 30-minute phone call at the time of this
5 wreck?
6 A. As I said, I have not seen the records.
7 So, no, I have not seen that.
8 Q. You would agree with me that when a truck
9 driver is executing a -- do you agree that it's a
10 pretty complex maneuver of the truck to have to
11 change several lanes to merge onto I-75 North,
12 crossing that bridge area and then merging?
13 MR. ROZELSKY: Object to the form.
14 THE WITNESS: I mean, it's a behavior.
15 As he testified, he was in the -- what had been
16 the right through lane of I-16 and was going to
17 make a single lane change to the right kind of
18 preceding or as part of the merge to I-75.
19 It's a lane change. I don't know that it's
20 that complex.
21 Q. Well, it's important for the truck driver
22 to be paying attention to what cars are in what
23 lanes when he's making a lane change, isn't it?
24 A. It's always important for truck drivers to
25 pay attention to their surroundings.

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1 Q. The answer is, yes, it's important for
2 Mr. McClure to be paying attention what cars are in
3 the lanes when he's trying to make a lane change
4 with his truck, correct?
5 MR. ROZELSKY: Object to the form.
6 THE WITNESS: Yes.
7 BY MS. MCARTHUR:
8 Q. And assuming Mr. McClure was talking on the
9 cell phone, then one plausible reason why he did not
10 see Ms. Little is he was distracted by talking on
11 cell phone, correct?
12 MR. ROZELSKY: Object to the form.
13 THE WITNESS: Under your assumption,
14 that could be a plausible reason.
15 BY MS. MCARTHUR:
16 Q. And are you familiar with the studies that
17 talk about inattention blindness caused by cell
18 phone use?
19 MR. ROZELSKY: Object to the form.
20 THE WITNESS: Yes, I've studied a
21 number of research papers on that, yes.
22 BY MS. MCARTHUR:
23 Q. What is inattention blindness caused by
24 cell phone use?
25 A. I mean, the words almost speak for

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1 themselves. If you're focused on another task,
2 you're diverting your cognitive processes away from
3 other things around you. If you're doing one thing
4 and you're not looking, your blind maybe potentially
5 to something else.
6 Q. And are you a person who ascribes to those
7 studies or believes in the efficacy of those studies
8 that people who are talking on cell phones don't see
9 things because of the connection of their brain to
10 their cell phone conversation?
11 MR. ROZELSKY: Object to the form.
12 THE WITNESS: I mean, I read each
13 study and take it for what it is. If you're
14 texting and looking down, obviously your eyes
15 are not on the road. If you're talking on a
16 cell phone on a headset, you certainly have the
17 ability to continue to scan and see the roadway
18 around you.
19 Furthermore, the research shows that
20 the people on cell phones typically leave more
21 space because they're aware that they might be
22 somewhat distracted. They sometimes drive a
23 little bit slower, typically drive a little bit
24 slower, so there's a number of factors that go
25 into assessing a cell phone usage.

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<p style="text-align: right;">Page 97</p> <p>1 BY MS. MCARTHUR: 2 Q. Do you hold the opinion or not, 3 Mr. Boggess, that cell phone use while driving 4 causes inattention blindness? 5 MR. ROZELSKY: Object to the form. 6 THE WITNESS: It may. 7 BY MS. MCARTHUR: 8 Q. And inattention blindness may be one 9 explanation for why Mr. McClure did not see 10 Ms. Little when she was there to be seen ahead of 11 him as he was coming up on her, isn't it? 12 MR. ROZELSKY: Object to the form. 13 THE WITNESS: If we assume he was on 14 his cell phone, it would be, as we said, a 15 possible or a plausible option. 16 BY MS. MCARTHUR: 17 Q. And you have been provided information 18 about Miss Little and her cell phone records, have 19 you not? 20 MR. ROZELSKY: Object to the form. 21 THE WITNESS: I have not seen her 22 records. I have her testimony that clearly 23 places her on the phone, holding the phone to 24 her ear. 25 BY MS. MCARTHUR:</p>	<p style="text-align: right;">Page 99</p> <p>1 Q. Well, assuming that that's when the 911 2 call came in then assuming that Mr. McClure had 3 begun a cell phone call at 10:28 a.m. that ended 31 4 minutes later that would put him at 10:59, would it 5 not? 6 MR. ROZELSKY: Object to the form. 7 BY MS. MCARTHUR: 8 Q. Just doing the math. 9 A. Simple math, roughly, yes. 10 Q. And if a cell phone -- if the 911 audio 11 record is correct that the cell phone -- that the 12 wreck was called in at 10:57:54, then that would, 13 assuming those times are correct, place him on the 14 cell phone at the time -- puts his cell phone in use 15 at the time that the wreck occurred on this case. 16 MR. ROZELSKY: Object to the form. 17 THE WITNESS: I would say two things 18 with that: One, that assumes that the two 19 computers being used to -- both the cell phone 20 company and 911 are the same server. And 21 they're mostly likely not the same service. 22 They could be. But that also then implies 23 that, despite being an accident allowing time 24 for someone to call in a 911 call that 25 Mr. McClure, for some reason, stays on his call</p>
<p style="text-align: right;">Page 98</p> <p>1 Q. Right. And she's admitted that she was 2 talking on phone, hasn't she? 3 A. She did, yes. 4 Q. But you have not been provided either the 5 911 record that reflects the first 911 call came in 6 at -- do you recall what it was, because I'm sure 7 you read it? 8 MR. ROZELSKY: Object to the form of 9 the question. 10 THE WITNESS: I don't recall the exact 11 time as we sit here. As you said, it's in the 12 records. 13 BY MS. MCARTHUR: 14 Q. You don't dispute the 911 call came in at 15 10:57:54 for this wreck, do you? 16 A. According to that system, yes. That's when 17 it came in. And even when we got into the other 18 case in questioning was -- the computer times of one 19 computer system versus another can be different the 20 way ping of different servers and update their 21 clocks. 22 So, again, that's a log of when the 911 23 call came in based on their system. I'm not here to 24 dispute that that is or is not the time it came 25 in.</p>	<p style="text-align: right;">Page 100</p> <p>1 for, you know, two minutes or better after the 2 accident. Which I would think, if I was in an 3 accident, I would hang up immediately. 4 So I find some questions with the 5 data -- a direct comparison with those two sets 6 of data. 7 BY MS. MCARTHUR: 8 Q. It would imply that Mr. McClure's cell 9 phone was in use at the time of the wreck, would it 10 not, Mr. Boggess? 11 MR. ROZELSKY: Object to the form. 12 BY MS. MCARTHUR: 13 Q. If the wreck occurred right before 14 10:57:54. 15 A. If those clocks are synced, yes. There was 16 a signal going to his phone. He testified that he 17 was having problems with that headset that didn't 18 hang up calls. 19 Again, I haven't really looked in -- like I 20 said, I have not looked into this data. I'm not 21 offering opinions on it. I'm simply saying that, 22 looking at the two times, that would imply that 23 there was some overlap. 24 Q. So you're not even asked to assume that he 25 was on the phone. You're asked to assume that he</p>

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1 was not on the phone at the time of the wreck,
2 correct?
3 MR. ROZELSKY: Object to the form.
4 THE WITNESS: I haven't been asked to
5 assume either. I have looked at it as a --
6 this particular accident is that Mr. McClure
7 made a left or right lane change and merging
8 into the right lane and what available options
9 realistically Miss Little had and what
10 distractions she may have had in this accident
11 as well. That's been --
12 Q. Actually --
13 A. -- the request of counsel, to look at this.
14 Q. If the wreck happened at the time on the
15 record wreck report, 11:05, he was also on the phone
16 at 11:01 for six minutes to Hickory, North Carolina.
17 So that would also put him to 11:07.
18 MR. ROZELSKY: Object to the form of
19 the statement.
20 MS. MCARTHUR: We can do the simple
21 math again.
22 THE WITNESS: The accident report
23 lists the accident happens at 11:50 you say?
24 BY MS. MCARTHUR:
25 Q. Yes.

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1 A. Okay.
2 Q. Does it not?
3 A. It does.
4 Q. So if he made a call to Hickory at 11:01,
5 six minutes that would put him at 11:07, wouldn't
6 it?
7 MR. ROZELSKY: Kathy, when you're at a
8 break point --
9 MS. MCARTHUR: Let me finish this
10 final question.
11 MR. ROZELSKY: We're just talking
12 about what we want to do for lunch, that's all.
13 MS. MCARTHUR: I don't want to break
14 for lunch. I'll tell you that right now.
15 (Off the record.)
16 THE WITNESS: I understand that -- or
17 I believe I recall that Mr. McClure calls his
18 office after the accident happens which implies
19 it would be consistent with the 11:01.
20 So whether it's 11:05 and the accident
21 report is actually accurate, if it's off a
22 different dispatch record of the officer, you
23 know, you a different time off of a different
24 computer, I can't say.
25 BY MS. MCARTHUR:

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1 Q. Well, do you know the time that the truck
2 records reflect that he hit -- the button that he
3 said he had the wreck?
4 A. I believe that computer system, if I
5 recall, says 10:58, if I recall.
6 Q. And if the wreck happened -- that would be
7 consistent with the 911 call at 10:57:54, wouldn't
8 it?
9 A. It would be close in time, yes.
10 Q. And that would place him, assuming the
11 records are right, that his cell phone was in use at
12 that time, correct?
13 A. Again, if all those different computer
14 clocks are actually synced, yes. If not, no.
15 Q. You had not --
16 A. And again, as he testified, he thought he
17 ended call and set the headset down. Whether that's
18 accurate or not, don't know.
19 Q. Let's assume it was not accurate, okay?
20 A. Okay.
21 Q. Let's assume Mr. McClure was talking to
22 another truck driver from the trucking company at
23 the time he was making this lane change, what would
24 be your commentary on that, Mr. Boggess, about
25 Mr. McClure's cell phone use assuming he was doing

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1 that? What would say about that?
2 MR. ROZELSKY: I'm going to object to
3 the form. He has not been held out as an
4 expert on that point. It's not in any part of
5 Rule 26A report about whether or not he has
6 opinions as to the use of the cell phone by the
7 truck driver.
8 MS. MCARTHUR: Well, he's been held
9 out as an expert on Ms. Little and her cell
10 phone use, so I think it's fair to ask him
11 about Mr. McClure, and I'm planning to.
12 MR. ROZELSKY: Fair enough.
13 THE WITNESS: Can you repeat the
14 question, please.
15 BY MS. MCARTHUR:
16 Q. Do you hold yourself out as an expert on
17 the distraction caused by cell phone use while
18 driving?
19 A. To some capacity. I mean, I've researched
20 the topic.
21 Q. Do you or don't you? Yes or no.
22 A. Yes, in certain aspects of it, yes.
23 Q. All right. So, assuming Mr. McClure was
24 talking on his cell phone to another truck driver
25 from the same company or anybody when he made the

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<p style="text-align: right;">Page 105</p> <p>1 lane change or for 30 minutes prior to that, what 2 would be your comment or your opinion about the 3 effect of his use of the cell phone on this wreck 4 assuming you had been asked to look at that and give 5 your opinion? 6 MR. ROZELSKY: Same objection. 7 THE WITNESS: Again, assuming he's on 8 the cell phone with someone at the time, then, 9 as we said, it may be a reason -- it may factor 10 into why he missed the Civic alongside of him. 11 It may have simply been positional reasons. It 12 may have been the way he scanned the mirrors. 13 I don't have an opinion beyond that. 14 BY MS. MCARTHUR: 15 Q. I'm asking, assuming he was on the 16 telephone, what is your opinion about whether or not 17 he was distracted in his driving by the use of the 18 cell phone as he was changing lanes? That's all I'm 19 asking you about, Mr. Boggess, is your opinion about 20 his cell phone use? 21 MR. ROZELSKY: Object to the form. 22 THE WITNESS: As I thought I just 23 said, it may have had some effect and it may 24 not have, if he was on the phone. We know he 25 made a lane change from the left to the right</p>	<p style="text-align: right;">Page 107</p> <p>1 THE WITNESS: I'm not offering legal 2 opinions. Again, she's seemingly established 3 in the right lane of travel. 4 BY MS. MCARTHUR: 5 Q. And Mr. McClure had no business whatsoever 6 merging into Miss Little's lane virtually on top her 7 car, did he? 8 MR. ROZELSKY: Object to the form. 9 THE WITNESS: Mr. McClure or any other 10 car should not merge from the left line into 11 the right lane occupied by another vehicle. 12 BY MS. MCARTHUR: 13 Q. And in fact, Mr. McClure could have pulled 14 back to the left, couldn't he, to avoid Miss Little 15 if he had been looking in his mirror and had seen 16 her? 17 A. If he detected her that could have been an 18 option, yes. 19 Q. Is it your testimony that Mr. McClure 20 couldn't see Miss Little's vehicle once it was 21 trapped by the trailer wheels down the side of his 22 truck if he had looked in the side mirror? 23 A. I haven't tried to assess that. Again, if 24 he checked his mirrors, he may have been reasonably 25 able to see her. I believe the mirrors would be</p>
<p style="text-align: right;">Page 106</p> <p>1 into the Civic. 2 BY MS. MCARTHUR: 3 Q. Well, I mean, you said affirmatively that 4 Miss Little was distracted, and, therefore, she 5 didn't perceive and react quickly, correct? Isn't 6 that what you said? 7 A. You can read the opinion. It's similar to 8 that, what I said in my report, yes. 9 Q. Well -- 10 A. We know her hands are off the steering 11 wheel. She's using a hand held device and executes 12 -- admittedly executes no vehicle maneuver to react 13 to the accident. 14 Q. Assuming that she -- let me ask you this: 15 Who had a duty in terms of a driver duty as far 16 as -- 17 MS. MCARTHUR: Let me just strike 18 that. 19 BY MS. MCARTHUR: 20 Q. Did Miss Little have control of her lane of 21 travel when the truck merged into her lane? 22 A. She seemingly was in her lane. 23 Q. And she had a legal right to be in that 24 lane, didn't she? 25 MR. ROZELSKY: Object to the form.</p>	<p style="text-align: right;">Page 108</p> <p>1 aimed down the side of his vehicle. 2 Q. Well, he should have been able to see her 3 car trapped by his trailer at the point that it was 4 in his mirror on the side of his truck, shouldn't 5 he? 6 A. Reasonably, he could have seen her. But as 7 he testified, he felt he was hit in the rear. He's 8 seeing in his -- at least in his left mirror, he's 9 seeing debris in the roadway as if maybe he's been 10 struck. And he seemingly Diverted his attention 11 forward as if to pull off the road onto the shoulder 12 to get off the road. 13 Q. He's also testified that Miss Little wasn't 14 there at all, hasn't he? 15 MR. ROZELSKY: Object to the form. 16 THE WITNESS: In his perception, 17 yes. 18 BY MS. MCARTHUR: 19 Q. So Mr. McClure's memory of this is faulty, 20 isn't it, because Miss Little was there in that 21 lane? 22 A. He missed her, yes. 23 Q. Right. So his memory on the other items 24 may be faulty as well. Would you agree with that? 25 MR. ROZELSKY: Object to the form.</p>

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1 THE WITNESS: I mean, as we said,
2 anybody can misjudge certain things, and he
3 obviously misjudged or missed Miss Little
4 beside him initially. Beyond that, he's trying
5 to drive his truck to the shoulder and assess
6 what just happened.
7 BY MS. MCARTHUR:
8 Q. My questions was whether he -- if he had
9 looked in his side-view mirror, once her vehicle is
10 trapped by his trailer, wouldn't he have been able
11 to see her?
12 A. As I said, yes, I believe in his mirror he
13 would have seen her. But he's probably looking
14 elsewhere to pull his vehicle over, so he's not
15 rechecking that mirror.
16 Q. Well, do you find it acceptable that he
17 dragged her vehicle 735 feet, Mr. Boggess?
18 MR. ROZELSKY: Object to the form.
19 BY MS. MCARTHUR:
20 Q. He did, didn't he? I mean, he did drag her
21 735 feet.
22 A. He did drag -- the truck drug the Honda
23 along the roadway, yes. In terms of acceptable, if
24 he knew he was dragging her, I would say probably
25 that's not acceptable. If he's unaware, it's not

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1 intentional. I don't think it falls under
2 acceptable or not.
3 Q. He smashed her vehicle into the guardrail
4 on the right side as well as into the bridge on the
5 right side, didn't he?
6 A. Her vehicle was pushed to the right, yes,
7 into both.
8 Q. How much of a mile is 735 feet?
9 A. Divide that by 5280. I mean, it's between
10 a tenth -- more than a tenth of a mile.
11 Q. More than a tenth of mile he dragged her
12 vehicle. And her wheels weren't rolling, were they,
13 all of them?
14 MR. ROZELSKY: Object to the form.
15 BY MS. MCARTHUR:
16 Q. Wasn't one of the wheels pinned?
17 MR. ROZELSKY: Object to the form.
18 THE WITNESS: It was, yes.
19 BY MS. MCARTHUR:
20 Q. So it's a function of a rolling car
21 being -- rolling along with the truck. It's a
22 vehicle with one wheel pinned being dragged, isn't
23 it?
24 MR. ROZELSKY: Object to the form.
25 THE WITNESS: Seemingly, yes.

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1 BY MS. MCARTHUR:
2 Q. How much did that car weigh?
3 A. Not accounting for her, roughly 2388
4 pounds, which compared to his vehicle is fairly
5 small.
6 Q. Have you used the weight of her vehicle
7 being dragged like a dead weight by the truck, not
8 something that's rolling, in order to calculate his
9 speed at the time he attempted to stop?
10 A. No. But he's also braking to some degree
11 too. So it's not just a function of her vehicle
12 being drug. I mean, for something like that, you're
13 going to have to look at the weight distribution.
14 We're talking about the rear left wheel being drug,
15 whereas the others potentially were still free
16 rolling, so the -- you know, the drag factor of a
17 2300-pound car versus a tractor trailer is really
18 not all that much.
19 Q. Can you figure the speed of the truck or
20 not at the point he decided he needed to stop?
21 A. Not outside of witness statements, no.
22 Q. Are you able to figure the speed and just
23 haven't done it?
24 A. We may be able to put bounds on it, but --
25 it's a maximum speed based on that distance. But

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1 certainly the true speed is going to be well under
2 that. I have not been asked to or needed to.
3 Q. Why would you say that the true speed is
4 going to be well under the maximum speed? One or
5 the would be correct, wouldn't it?
6 MR. ROZELSKY: Object to the form.
7 THE WITNESS: The tractor trailer did
8 not lock down all 18 -- you know, all 10 brake
9 chambers and slide for 735 or some odd number
10 of feet. If it did, it would have some
11 astronomical speed. We know it didn't do that.
12 I mean, the witnesses don't place it anywhere
13 near those kind of speeds, so we know it's
14 something less than that.
15 The magnitude of his braking, we don't
16 know. We know that he went with the intention
17 of going over on the shoulder and was braking,
18 but not -- as he testified, not in a panic or
19 an emergency type of maneuver.
20 BY MS. MCARTHUR:
21 Q. The looking at your list of cases, the
22 Larkins case, who were you retained by on that
23 case?
24 A. I believe counsel for East Coast
25 Contracting.

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1 Q. And McCray vs. Wilson Trucking who were you
2 retained by?
3 A. Counsel for Wilson Trucking.
4 Q. The same for this next one as well, Smith
5 vs. Shipping Utilities who were you retained by?
6 A. If I recall, that was a workplace accident
7 with a forklift. I was retained by counsel for
8 shipping utilities, but I can't be certain.
9 Q. What happened in that trial?
10 A. Defense verdict.
11 Q. Shuler vs. Werner Enterprises who were you
12 retained by?
13 A. I was retained by counsel for Werner
14 Enterprises. It was a two tractor trailer accident
15 with accident reconstruction and biomechanics
16 associated.
17 Q. The Shuler was not in the tractor trailer
18 was she, or was she?
19 A. It's been three and-a-half years, I can't
20 be sure. For some reason I want to say yes, she
21 was. It was another tractor trailer, but I may be
22 mistaken.
23 Q. Okay. Holder vs. Shelnutt.
24 A. That, it was actually sued in a counter
25 suit in that as I recall. It was both those

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1 individuals were suing each other. It was a
2 two-vehicle accident and I was retained by counsel
3 for -- actually, I don't remember which one because
4 I don't which one was the initial and which one was
5 the counter suit.
6 Q. In the last -- it looks like four years
7 almost, you have not given a deposition in a car
8 wreck case for a plaintiff at all, have you, other
9 than the Velez case where you were also testifying
10 for Velez as a defendant, correct?
11 A. There's a few that I can't remember so I
12 can't be certain to answer your question. Of the
13 ones I remember, deposition wise, I think that was
14 the -- you were writing -- I think that was the only
15 plaintiff. There was the trial plaintiff that I was
16 not deposed on prior to trial.
17 Q. So would you say that your testimony at
18 deposition a over 90 percent -- 95 percent for
19 defense of -- defense of defendants?
20 A. Based on this testimony list only, or my
21 testimony?
22 Q. Based on your deposition list for the last
23 four years.
24 A. I haven't figured out a percentage.
25 Obviously, there's only a couple plaintiff cases

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1 listed here. Potential plaintiff cases.
2 Q. I only found one.
3 A. As I said, the Holder and Shelnutt case, I
4 was plaintiff on one, defense on the other, as I
5 recall. That was the last one on the last page.
6 Q. I thought you said you didn't know.
7 A. There was two suits. There was a -- both
8 were suing each other. I only listed it as one
9 here. So two-vehicle accident. They disagreed over
10 who was at fault.
11 Q. So are you -- what would be your testimony
12 as to the percentage of times in car wreck cases
13 that you are retained on behalf the plaintiffs
14 versus defendants?
15 A. I've never added it up. In terms of
16 retention. I think it's higher than what list shows
17 in terms of that breakdown, meaning more plaintiff
18 cases. I think I probably testified in the past, if
19 you look at my -- if you track down prior testimony,
20 I probably said 75/25. Another time, I may have
21 said 80/20. But I've never add it up, so I don't
22 know.
23 Q. This is all of the depositions you've given
24 since December of 2009, correct?
25 A. October of '09, yes, ma'am.

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1 Q. October of '09?
2 A. It's a four year -- I apparently didn't
3 give one in November or October of '09.
4 Q. Okay. And you started with SEA --
5 A. October 2007.
6 Q. Okay. So you wouldn't have given any
7 depositions on accident reconstruction cases before
8 October of '07 or when you started with SEA, would
9 you?
10 A. No, ma'am.
11 Q. And you wouldn't have given any actually
12 with SEA until after you took the Northwestern
13 course, would you?
14 A. I could have. There's testimony that it's
15 dropped off this list that I don't recall as we sit
16 here.
17 Q. I think I probably have a year prior to
18 that in the Middlebrooks case?
19 MR. ROZELSKY: Object to the form of
20 the statement.
21 BY MS. MCARTHUR:
22 Q. What month did you start with SEA?
23 A. October of '07.
24 Q. Okay. So this list is from October of --
25 A. '09.



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1 Q. '09 forward.
2 A. Yes, ma'am.
3 Q. So this list contains every deposition
4 you've given for all but the first two years of your
5 work with SEA?
6 A. To my knowledge, yes, ma'am.
7 Q. All right. And then you didn't take the
8 Northwestern course until November of '08, correct?
9 A. January and February of '08.
10 Q. Where did I get November? Okay. January,
11 February.
12 Okay. So would you believe that you would
13 have given depositions on accident reconstruction
14 prior to taking that course.
15 A. Given my short time with the company, I
16 doubt it, but I don't recall for sure.
17 Q. So what we have here is at least two-thirds
18 of the depositions -- at least two-thirds of the
19 depositions you've given while you've been employed
20 by SEA, correct?
21 A. From a time standpoint, I don't know how
22 many I gave in that two-year window potentially.
23 Q. Okay. If you're trying to reconstruct this
24 wreck, it would be important for you to know -- in
25 order to be fair, it would be important for you to

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1 know whether Mr. McClure was on the cell phone or
2 not, wouldn't it?
3 MR. ROZELSKY: Object to the form.
4 THE WITNESS: It depends on what I'm
5 asked to do.
6 BY MS. MCARTHUR:
7 Q. Well, what you were asked to do in this
8 case was what?
9 MR. ROZELSKY: Can we take a short
10 break because this is a new line of
11 questioning? Do you mind?
12 BY MS. MCARTHUR:
13 Q. Can you answer the question and then we'll
14 stop?
15 MR. ROZELSKY: That's fine.
16 THE WITNESS: My report says that SEA
17 was specifically requested to inspect the scene
18 of the vehicles, review the provided discovery
19 documents, perform relevant research and
20 investigation and complete an accident
21 reconstruction analysis to the extent necessary
22 pursuant to the allegations and requests in the
23 subject case.
24 BY MS. MCARTHUR:
25 Q. So the question again: In order to be

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1 fair, based on the scope of the project you just
2 described, it would have been important for you to
3 know whether Mr. McClure was actually talking on the
4 phone, or whether there was evidence to support
5 that, wouldn't you, at the time of this wreck?
6 MR. ROZELSKY: Object to the form.
7 THE WITNESS: Again, based on the
8 requests of what I was asked to look at, no.
9 It's not a matter of fairness or otherwise.
10 It's a -- I mean, I think in the report I
11 readily say that the Honda was in the right
12 lane and the tractor trailer began to maneuver
13 from the, I guess, the middle lane into the
14 right lane.
15 The questions that I've been asked, as
16 outlined in my opinions in the report, are
17 focused on where this happened, the distances
18 between the vehicles, as Mr. Alexander has even
19 testified about, and then reaction potential
20 for Miss Little to avoid the accident.
21 That's what I was asked to do and
22 that's what I've done in this case.
23 MS. MCARTHUR: We can take a break.
24 (A break was taken from 1:02 p.m. to
25 1:08 p.m.)

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1 BY MS. MCARTHUR:
2 Q. Looking at your report, Mr. Boggess, you
3 don't indicate anywhere in this report that you did
4 not do the inspection of the vehicle in the scene,
5 do you?
6 A. I don't say that, no. I say that, I mean,
7 SEA did. Some person of SEA did. I don't say one
8 way or the other.
9 Q. You agree, don't you, that personally
10 viewing the scene and personally doing the
11 inspection in some cases is important, isn't it?
12 MR. ROZELSKY: Object to the form.
13 THE WITNESS: In some cases it could
14 be and in others it's meaningless.
15 BY MS. MCARTHUR:
16 Q. At any rate --
17 A. It depends on the documentation done, too.
18 I mean, in this case, you know, there's
19 documentation done both by Mr. Alexander and
20 Mr. Peters.
21 Q. You've not asked to go view the scene, have
22 you?
23 A. Not since getting further involved. As I
24 said, Mr. Rozelsky initially called me to go to the
25 scene. Due to my unavailability, Mr. Peters covered

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1 that inspection, which occurs or has occurred in the
2 past.
3 Q. The question was -- or I asked you: Have
4 you asked to go view the scene?
5 A. I have not asked to go back to the scene.
6 Q. Have you asked to go view the truck or the
7 Honda?
8 A. I have not asked to go back and review
9 those.
10 Q. Did you, in fact, pass the assignment along
11 to Mr. Peters because you were not available when it
12 first came in?
13 A. I don't recall exactly how it all
14 transpired. I know that I was unavailable. I, you
15 know, probably told Mr. Rozelsky. I said, I can't
16 go, but can offer you Mr. Peters who's in the
17 Atlanta area. It would be closer than myself
18 anyway. So he took me up on the offer and allowed
19 Mr. Peters to go.
20 Q. Is it your testimony that it was not
21 intended for Mr. Peters to actually do the work then
22 since he went?
23 A. I don't know what Mr. Rozelsky's intentions
24 were.
25 MS. MCARTHUR: Did you all give me any

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1 bill yet?
2 MR. ROZELSKY: There's -- she made
3 three copies.
4 BY MS. MCARTHUR:
5 Q. Looking at this bill then, it actually
6 shows --
7 MR. ROZELSKY: Have you marked that as
8 an exhibit?
9 MS. MCARTHUR: I will.
10 MR. ROZELSKY: I just didn't know if
11 you had.
12 MS. MCARTHUR: Let's mark it P4.
13 (PLF. EXH. 4-A, Bill; 5/22/12 was marked
14 for identification.)
15 (PLF. EXH. 4-B, Bill; 12/19/12, was
16 marked for identification.)
17 BY MS. MCARTHUR:
18 Q. I'm handing the one that's dated 4A. It's
19 dated 4/16, or it's actually dated May 22nd, '12.
20 It shows that Mr. Peters has billed for an accident
21 reconstruction, doesn't it?
22 A. He coded as that. I mean, most of the
23 descriptions are Photo Modeler, which is a program
24 that's allowing him to get crush measurements and
25 scene measurements from the photos.

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1 Q. And he's reviewed the ECM data also,
2 correct?
3 A. It does appear that he did, yes.
4 Q. Who downloaded the ECM?
5 A. I don't recall exactly which person hooked
6 up and downloaded it.
7 Q. Is there anything on the ECM -- you've
8 reviewed the data from that, right?
9 A. Yes, ma'am.
10 Q. Anything on the ECM pertaining to this
11 wreck?
12 A. None of the hard brakes or the last stop
13 record are consistent with matching, so no.
14 Q. Are consistent, what?
15 A. With this actual event.
16 Q. That's because the truck was driven
17 following this wreck, correct?
18 MR. ROZELSKY: Object to the form.
19 THE WITNESS: The hard brakes, I
20 believe, are older, so that's suggested that
21 the accident did not log a hard break event.
22 The last stop record would have been moved --
23 or would have been wiped presumably the second
24 the truck got moved and after it got released
25 by the officers from the side of the road.

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1 BY MS. MCARTHUR:
2 Q. So, it's your belief that the ECM data had
3 nothing to do -- for this truck had nothing to do
4 with this case?
5 A. As I said, the two hard stop events and the
6 last stop certainly not. Yes.
7 Q. Is there anything on it that pertains to
8 this wreck, the ECM data?
9 A. Not that I recall unless there may be like
10 a governed speed, if we get into somewhat speed
11 potentials. I don't recall what that number is as
12 we sit here though.
13 Q. So the drawing production Mr. Simbro. Who
14 is Mr. Simbro?
15 A. He's actually a retired individual with SEA
16 now, but he apparently did some of the drawings --
17 compiled some of the drawings from Mr. Peters
18 following his efforts.
19 Q. Mr. Austin preparing diagrams and photos?
20 A. He likely processed the photographs. He is
21 a technician in the front office and Mr. Peters
22 probably handed him a photo card when he came back
23 in, had him prepare the CDs and print photographs.
24 Q. Then in looking at 4-B, Mr. Peters,
25 12/19/12, what does that reference?

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1 A. Which date is that, I'm sorry?
2 Q. 12/19/12, the second.
3 A. At my request, he did some crush profiles
4 based on the photogrammetry.
5 Q. So, was anything at all on 4-A, the first
6 two pages we just looked that encompassed
7 Mr. Peters, Mr. Simbro, Mr. Austin, that whole bill
8 of \$4,580.45, none of that was done at your request,
9 was it?
10 MR. ROZELSKY: Object to the form.
11 THE WITNESS: I don't have time on the
12 project at that point, so I don't necessarily
13 note my involvement at that point. So no, I
14 don't believe it was.
15 BY MS. MCARTHUR:
16 Q. So then looking at the bill that is 4-B,
17 when did you become involved after Mr. Peters did
18 all the work reflected on 4-A, plus I believe the
19 seat inspection and the Honda inspection March 28,
20 2012?
21 A. From the two billings that I have in front
22 of me, it appears that I got back involved
23 December 15, 2012.
24 Q. Why were you not involved between March of
25 2012 and December 15th, 2012?

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1 MR. ROZELSKY: Object to the form.
2 THE WITNESS: Because Mr. Rozelsky
3 didn't call me back and ask me to get involved,
4 I presume. I mean, it looks to me from the
5 billings that Mr. Peters did some initial leg
6 work and some analysis of the photographs using
7 Photo Model and created some drawings.
8 And it looks like it pretty much sat idle
9 until the December time frame when I got contacted,
10 apparently by Mr. Rozelsky, and did some analysis.
11 BY MS. MCARTHUR:
12 Q. Do you have a record of Mr. Rozelsky
13 contacting you in December of 2012?
14 A. I mean, if it's by email, it's probably in
15 my communications folder, if there's a right tab
16 marked as communications. Likely it would probably
17 just be a phone call that he was going to --
18 requesting my involvement.
19 Q. What I'd like to know is -- by the way,
20 looking at this 3/28/12, all these handwritten
21 notes?
22 A. Yes, ma'am.
23 Q. And drawings, field notes --
24 MS. MCARTHUR: And we'll mark that as
25 Plaintiff a Exhibit Number --

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1 MR. ROZELSKY: 5.
2 MS. MCARTHUR: 5.
3 (PLF. EXH. 5, Field Notes, was marked
4 for identification.)
5 BY MS. MCARTHUR:
6 Q. Whose notes are those?
7 A. Those are Mr. Peters.
8 Q. Have you used those notes?
9 A. I've certainly reviewed them, yes. I used
10 them in my analysis.
11 Q. Have you reviewed his accident
12 reconstruction?
13 A. He has provided me his materials to which
14 he did. I mean, a lot of it was simple drawing
15 compilations. I don't believe he had actual done
16 calculations. I think he's done some laying out of
17 the vehicles as you see in the drawing files, but
18 that was the extent.
19 Q. Have you seen his reconstruction,
20 Mr. Boggess?
21 MR. ROZELSKY: Object to the form.
22 THE WITNESS: To the extent that it
23 was done, I believe so, yes.
24 BY MS. MCARTHUR:
25 Q. And what would it reflect?

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1 A. Again, it would be the drawing files that
2 you have in front of you somewhere. There's a
3 couple PowerPoint looking filings that he sent me
4 that he's put some pictures together. I believe
5 actually, this is the crush profiles that he did for
6 me at my direction in December, actually. I'm
7 looking at them. That was the extent.
8 My understanding is, his reconstruction is
9 limited to photo modeling, drawing layouts and
10 engagement of the vehicles, and that was the extent
11 at that time.
12 Q. So what were you asked to do in December of
13 2012? What you're showing here in this report?
14 A. In December of 12th, Mr. Rozelsky, which
15 ties into what Mr. Peters is doing was to look at
16 the crush damage to the Civic and consider the
17 magnitude of the crush and the magnitude of the --
18 some of the contact interactions between the
19 vehicles.
20 Q. Looking at what we marked as Plaintiff
21 Exhibit Number 6 --
22 (PLF. EXH. 6, Project Assignment Report;
23 3/16/12, was marked for identification.)
24 MR. ROZELSKY: Kathy, to the extent
25 that you're marking the originals, which I

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1 don't object, I would just ask that you not
2 hand write on the originals. I noticed you
3 wrote on some of the copies.
4 MS. MCARTHUR: Right.
5 MR. ROZELSKY: But --
6 MS. MCARTHUR: I'm not going to write
7 on this.
8 MR. ROZELSKY: Okay.
9 BY MS. MCARTHUR:
10 Q. Looking at this Number 6, is that the
11 products assignment report from March 16th, 2012?
12 A. Yes. This is our project information form,
13 yes, ma'am.
14 Q. To whom does it reflect it was assigned?
15 A. It lists Mr. Peters' name and that
16 basically controls who the billing goes to. He was
17 doing the initial leg work. If I went back in the
18 system and reprinted today, it would have my name
19 there now most likely.
20 Q. But it reflects that Mr. Rozelsky has
21 signed this to Mr. Peters on that document P-6,
22 correct?
23 MR. ROZELSKY: Object to the form.
24 THE WITNESS: At the time this was
25 printed, yes, it indicated Mr. Peters.

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1 (PLF. EXH. 7, DDEC reports, was marked
2 for identification.)
3 BY MS. MCARTHUR:
4 Q. And looking at what we will mark as
5 Plaintiff's Exhibit 7, tell us what that is.
6 A. 7 appears to be the DDEC reports as imaged
7 from the involved Freightliner.
8 Q. It's the what?
9 A. DDEC, D-D-E-C, Detroit Diesel Engine
10 Control report.
11 Q. What does it add to your knowledge about
12 this wreck?
13 A. As we talked about, one of the things that
14 was checked was the last stop records and the hard
15 brake events, which, as we discussed, are not
16 related to the accident at hand.
17 Q. Tell me what page the hard brake event is
18 on.
19 A. They're printed as sections so they restart
20 numbering. The last stop would be a three-page
21 document -- actual a four-page. Three pages of
22 data, and then restarts at Page 1 again for the
23 plot. And then for the first hard brake event, it's
24 going to start at number one again. If you're
25 looking at the page numbers at the bottom right,

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1 there's not a global case number in any of these as
2 the report is printed. It's toward the rear.
3 Q. Is it a diagnostic record?
4 A. No, ma'am. You have to keep going.
5 Q. Hard Brake 1 and Hard Brake 2.
6 A. Yes. And then it's going to go back and
7 Hard Brake 1 and 2 again for the raw data, I
8 believe.
9 Q. So when was the Hard Brake 1?
10 A. From the report, Hard Brake 1's incident
11 odometer is 50,546.3 miles. The current odometer
12 reading at the time of the imaging was 66,167.9, so
13 some almost 15 to 16,000 miles later in the
14 vehicle's life.
15 Q. Later or --
16 A. Earlier from the time of the download.
17 Q. So Hard Brake 2 had occurred when?
18 A. More than 5,000 miles prior at 60,853.
19 Q. And you know that because of the odometer
20 reading that it was not pertaining to this case?
21 A. That's one reason, yes.
22 Q. What is the other reason?
23 A. I mean, looking at the data, they don't
24 sync with the circumstances of the accident either.
25 But again, when you do these downloads, it

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1 logs the current odometer in the header up top, and
2 then it logs the incident odometer some inch
3 and-a-half below that listed on those reports, so
4 you can compare those.
5 Q. All right. And then the last stop record,
6 what does that have to do with --
7 A. The last stop is a function of -- as kind
8 of indicated by the last time the vehicle was
9 brought to a stop from some speed. It does take a
10 few miles an hour of speed to get -- turn the system
11 and reset the system. So if you move a mile an
12 hour, it may not reset. So once you get the vehicle
13 up to some appreciable speed and it automatically
14 clears and then over rights with the next last stop
15 event.
16 Q. So what was the date of the last stop
17 record in this ECM download?
18 A. The mileages obviously match up, but the
19 last stop time is March 2nd, 2012.
20 Q. So February 20th, 2012 being the date this
21 wreck occurred, you're saying that it was downloaded
22 10 days after the wreck?
23 A. No, ma'am. It was downloaded, I believe,
24 on April 4th, 2012, which is the print date at the
25 top. That would be the time the report was printed.

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1 The incident -- the last time the vehicle
2 was moved according to the clock -- and you have to
3 sync the clocks and check the clocks. It says March
4 2nd, 2012.
5 Q. So, had it set since March 2nd, 2012?
6 A. If those are based on the same clocks, it
7 would appear that it set for a month and two days.
8 Q. So the wreck had happened on the 20th of
9 February, so 10 days after the wreck the truck was
10 parked for a period of over a month?
11 A. Something like that, yes, ma'am.
12 Q. But the ECM was not downloaded within a
13 time frame that would have picked up the data from
14 the wreck in terms what was there on the ECM at the
15 time of the wreck and for the minute or so before
16 the wreck, correct?
17 MR. ROZELSKY: Object to the form.
18 THE WITNESS: No, again as soon as the
19 vehicles pulled off the shoulder or even pulled
20 forward more than maybe a handful of feet, it
21 would have cleared that last stop, that could
22 have even occurred when they were separating
23 the two vehicles at the time of the -- you
24 know, at the scene trying to get one vehicle
25 separated off the other. They literally could

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1 have easily overwritten the last stop record at
2 that point too.
3 Q. The point is, it was -- what was the point
4 in downloading it April 2nd?
5 MR. ROZELSKY: Object to the form.
6 THE WITNESS: Recover whatever data
7 was there and preserve what's left of the data.
8 If, in fact, there had been a hard brake event,
9 it reasonably could have still captured it.
10 There was no hard brake event, however, so it
11 was not captured.
12 BY MS. MCARTHUR:
13 Q. These deposition summaries -- you have a
14 deposition summary, Lindsay Little, Lorraine Smith,
15 Officer Williams, Mr. McClure, Sean Alexander. Are
16 these deposition summaries that you did?
17 A. I did a portion of them, and my
18 administrative assistant would have done a couple of
19 the summaries for me.
20 Q. Who is your administrative assistant?
21 A. Joanie, J-O-A-N-I-E, Vischer,
22 V-I-S-C-H-E-R.
23 MS. MCARTHUR: We'll mark the
24 deposition summaries as 8. I just put a clip
25 on them.

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1 (PLF. EXH. 8, Deposition summaries, was
2 marked for identification.)
3 BY MS. MCARTHUR:
4 Q. You have a deposition of Sean Alexander --
5 not deposition, but his report and you underlined
6 reference material from the University of North
7 Florida, IPTM, Georgia Public Training Center,
8 Society of Automotive Engineers. Do you know why
9 you underlined that with green?
10 A. I don't.
11 Q. Can I have that back again?
12 A. Yes, ma'am.
13 MS. MCARTHUR: We'll mark the copy of
14 Sean Alexander's report as Exhibit Number 9.
15 (PLF. EXH. 9, Alexander Report, was
16 marked for identification.)
17 BY MS. MCARTHUR:
18 Q. Looking at that, let's go to your markings
19 on it, on Page 42.
20 A. Yes, ma'am.
21 Q. Starting at the top, you wrote a lot of
22 things on this, so could you kind of go through your
23 hand markings and explain what you wrote to me?
24 A. I'll do the best of my knowledge as I
25 recall. I would have cleaned this up into my

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1 analysis file that you also have.
2 But, initially, I'm drawing two boxes
3 side-by-side, up top presumably, talking about the
4 truck and the Honda. I started to write out some
5 equations but never finished, which is essentially
6 the distance of the truck. The velocity of the
7 truck times some time and then started to do some
8 equations.
9 Q. Okay.
10 A. Perception reaction time, I think I wrote
11 beside it less -- parenthesis, less, signal adds
12 clarity.
13 Q. What does at that mean?
14 A. He's using 1.5 seconds perception reaction.
15 It may, in fact, be less given various factors,
16 including the fact that you have a beacon. The
17 flashing light that's making it clear his intention
18 and you're not having to judge just the truck
19 changing the lane, but you're actually able to see a
20 further cue to simplify the analysis that you have
21 to do to decide what your reaction may or may not
22 be.
23 Q. So what's the perception reaction time that
24 you used in your calculations?
25 MR. ROZELSKY: Object to the form.

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<p style="text-align: right;">Page 137</p> <p>1 THE WITNESS: For the purposes of most of 2 my calculation, I still used 1.5, and actually 3 increased it and did some test, which you'll see my 4 analysis file, at 2.0. I never degraded it. I was 5 simply noting to myself that probably is a high 6 number. 1.5 seconds is based on -- where it was 7 derived is, it's the 85th percentile of people had 8 reacted by 1.5, so in reality, the average is 9 considerably less.</p> <p>10 Q. What else did you mark and why? 11 A. You know, I questioned the .74 g's. It 12 could be a little bit higher, especially coming up 13 the hill. Just a comment to myself, although on the 14 bridge, it's a fairly flat area. I ended up using 15 .74. I don't do anything with it. Just a note to 16 myself.</p> <p>17 Let's see, distance traveled by the tractor 18 trailer. He uses 51 feet. I note a minus one, 19 because, in fact, the kingpin setback is going be 20 three feet, not two feet, on a 53-foot trailer. It 21 would be too close to the front. So he's got a 22 little -- in fact, Mr. Peters measured it at three 23 feet three inches, consistent with my experience 24 with these types of trailers. So just noting that 25 number. Twenty-three feet tractor to kingpin, I</p>	<p style="text-align: right;">Page 139</p> <p>1 numbers what would happen. 2 Some of the other notes, the two plus 3.3 3 is just calculating how he got -- I mean, supporting 4 his own numbers trying to figure where he got 5 certain things. The comment about 4.75 seconds, I 6 did a calculation to figure out that if the Honda 7 had made a lane change -- this is even outlined in 8 my report, and certainly my analysis is filed, that 9 if the Honda used its lane, whether it simply moved 10 to white edge line with its right side tires, that 11 would have added the amount of time available for 12 the 2.29 he calculates to the 4.75.</p> <p>13 And then the remainder of it -- of the page 14 is simply calculating -- or recalculating those 15 things based upon the 74 feet or other numbers, 16 taking out the length of the Honda and others. This 17 is all predeposition, as I later figured out where 18 he was kind of coming up with these. But I did some 19 math to figure out essentially at -- even at 74 feet 20 by his own calculations, the 2.79 is the calculated 21 time compared to his 2.92 available just counting 22 the steer maneuver, which, even by his own math 23 would say that the Honda would have had time to get 24 out. So those were the purposes. 25 Q. All right. And then you've underlined</p>
<p style="text-align: right;">Page 138</p> <p>1 think I added the 3.5 later, because I believe 2 Mr. Alexander testifies that the rear bumper somehow 3 of the Honda is actually forward of the truck at the 4 time this all is taking place, so I noted that, I 5 think, later.</p> <p>6 I put not a parallel shift. When you're 7 considering a tractor trailer making a lane change, 8 or anybody making a lane change, when you're 9 steering at the front of the vehicle, the rear of 10 the vehicle has some delay in terms of the shift. 11 So he's talking about a lane shift of the vehicle.</p> <p>12 However, and you will see in my analysis 13 and in the simulations even, that the rear of the 14 trailer is going to lag in terms of its shift. It's 15 not going to come perfectly straight over. So 16 that's the point of that. I was making these 17 comments prior to the deposition, most of these 18 prior to the deposition, so I was questioning the 19 14.58 feet and why he would have added in the length 20 of the car. Post deposition, I understand that's 21 because he's putting a Honda out in front of the 22 tractor trailer despite testimony and despite the 23 other information.</p> <p>24 So initially, I was looking at his 25 calculations to see if he shifted based on those</p>	<p style="text-align: right;">Page 140</p> <p>1 under the Honda avoidance by steering issue, the 2 next to the last sentence, and you have emphatically 3 put B.S. under that.</p> <p>4 MR. ROZELSKY: Object to the form. 5 BY MS. MCARTHUR: 6 Q. Well, had you. 7 A. I wrote those initials and circled it, yes, 8 next to that.</p> <p>9 Q. It looks like you circled it about four 10 times. 11 A. Okay. 12 Q. Is that for emphasis? 13 A. No, just circled it. Again, he's talking 14 about the steering and the fact that the steering 15 would have no effect when, in fact, clearly if you 16 steer one's vehicle to the right as a vehicle is 17 merging in, the amount of time it takes to get the 18 one vehicle to you is going to obviously increase, 19 which is going to absolutely give you more time to 20 do something as opposed to just sitting there and 21 waiting for it to happen.</p> <p>22 Q. So you thought is opinion was bullshit? 23 A. I don't think he's -- no. I -- it's wrong. 24 It's incorrect. 25 Q. Is that how you customarily express</p>

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1 yourself --
2 A. No.
3 Q. -- about other professionals?
4 A. I didn't say that, write that. I wrote
5 initials.
6 Q. Did "B.S." mean something different from
7 that?
8 A. I don't recall what it meant. I'm
9 presuming it probably meant something like that, but
10 I don't typically say those words. I simply wrote
11 initials.
12 Q. You just write initials that mean those
13 words; is that right?
14 A. I could have.
15 Q. It did or didn't it?
16 A. It could have. As I said, yes, maybe.
17 Q. I mean, what else could it have meant?
18 A. I don't recall.
19 Q. Give me some options as to what it could
20 have meant besides that?
21 A. I don't know anything else.
22 MS. MCARTHUR: Let's mark the drawings
23 as --
24 BY MS. MCARTHUR:
25 Q. I may have already handed this back to you

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1 because I don't have a little folder, but that may
2 be the originals of that. I don't know if it is or
3 not.
4 A. I don't seem to have a marked folder for --
5 5 is the inspection notes. I have a drawings folder
6 that you took from there. I think you did not pull
7 out the aerials, or maybe you did. I have the
8 folder back for some reason while we were looking at
9 stuff. So I have the originals in the front of me.
10 MS. MCARTHUR: I think I've got it
11 all, but let's mark it Number 10.
12 MR. ROZELSKY: You want to mark the
13 original?
14 MS. MCARTHUR: Yeah, mark the original
15 Number 10.
16 (PLF. EXH. 10, Photos, was marked for
17 identification.)
18 BY MS. MCARTHUR:
19 Q. Let's go through these. Is Page 1 a
20 drawing that you did?
21 A. I believe Mr. Peters grabbed these aerials
22 in front of them and then provided me the file.
23 BY MS. MCARTHUR:
24 Q. The Page 2?
25 A. Yes, ma'am.

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1 Q. What is that showing?
2 A. It's using the Google imagery. It's the --
3 I called it the walking man's. It's ground level
4 view taken of those vehicles when they drive
5 through. It's off Google. Same with the third page
6 as well. The fourth, which is back to the aerial,
7 the side aerial off Google.
8 Q. So these are satellite photos with these
9 cars on them. That's real cars that were on it at
10 the time of satellite photos?
11 A. I presume, yes.
12 Q. And then this one, what is that?
13 A. These next -- and I have them grouped in,
14 not all bundled together. Actually, they are
15 numbered at the bottom. Photo-01 through Photo-11.
16 The first number, that six-digit number, is our
17 project number.
18 Q. Okay.
19 A. They're photogrammetry images, so they are
20 aerial photographs taken by Mr. Peters that he
21 collected and then numbers and call outs on there
22 are using photo modeler to create CAD data based on
23 the photographs that he collected.
24 Q. Then what were the photographs one through
25 11 used to produce?

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1 A. The CAD drawing.
2 Q. Where is it?
3 A. That would be in the drawing -- actually,
4 it's in the next couple pages after. So these
5 pictures here, the SEA logo on the bottom corner is
6 one of them.
7 Q. I'm down to Photo Number 11, and then the
8 next thing is this drawing?
9 A. Yes, ma'am.
10 Q. This is the CAD drawing?
11 A. Yes, ma'am.
12 Q. And what is shown on this other than the
13 highway?
14 A. The pavement transition lines, things in
15 the road are. There's a mark. There's a gray line
16 indicating the tire mark and it's labeled as such.
17 And then there's a gouge also noted as estimated
18 position on the bridge itself and right bottom
19 corner. The drain is also called out, which shows
20 up in some of the police photographs.
21 I should note that of these photographs,
22 these are photos used in the photo modeler. Looking
23 back through here, 9, 10 and 11 are actually police
24 photographs.
25 Q. Right.

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1 A. As opposed to Mr. Peter's photographs
2 obviously giving vehicles from the officer's point
3 of view.
4 Q. The final one that I have, the last thing
5 in this group of pictures is this one that says
6 begin --- it has writing on it on the picture.
7 A. Yes, ma'am.
8 Q. And "begin continuous black tire mark,"
9 what does that reference?
10 A. For Mr. Peters' drawings that's showing
11 essentially the tire mark being left as a result of
12 the Honda being pulled along by the tandems of the
13 tractor trailer.
14 Q. And what is -- right below the "begin
15 continuous black tire mark," there's a light yellow
16 line there.
17 A. I'm sorry where are you pointing?
18 Q. (Indicating).
19 A. With the dots above them?
20 Q. Yes.
21 A. That is the guardrail, the bridge guardrail
22 plus -- and the metallic guardrail that tapers off
23 toward the top.
24 Q. So where is the bridge side on this? It
25 says, begin continuous white marks on bridge

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1 curbing --
2 A. Yes, ma'am.
3 Q. -- here on the very first, first block --
4 the beginning of the truck. And it shows at the
5 spot where the truck is impacting the car.
6 A. Yes, ma'am.
7 Q. So, does it show the bridge on this
8 picture?
9 A. The surfaces of the lanes on the bridge,
10 yes. He has not continued, apparently, in this
11 version of drawing or the drawing period, I guess,
12 the railing of the bridge.
13 Q. So he doesn't -- it more or less shows her
14 off the side of the road at the point that the truck
15 is impacting her in this picture down at the bottom
16 right-hand corner, does it not?
17 A. It's showing the -- and he's noting that
18 the white marks on the bridge curbing begin there,
19 which, obviously, puts the Honda against such the
20 cause of those marks. So that's where the white
21 marks necessarily are.
22 Q. All right. So, he does not reflect her
23 being hit before then, correct?
24 A. Well, it's cut off. I mean, it's --
25 Q. Where's the rest of it?

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1 A. I don't think he's shown points prior,
2 because there's not going to be roadway evidence to
3 show the full paths. It's simply showing the Honda
4 against the curbing in that location necessarily.
5 It's a curbing location to cause those marks.
6 Q. Do you disagree with this depiction in this
7 picture as by Mr. Peters or do you agree with it?
8 A. I would probably -- I may do things
9 slightly different. I haven't tried to place them
10 throughout, you know. But, again, we know the Honda
11 is here. We don't know the exact truck's position
12 at that point. He's showing it against it, but
13 there's not -- these truck positions are not.
14 There's no evidence to say -- the roadway evidence
15 to exactly place it. He simply just showing the
16 truck against it.
17 Q. What is it showing? It's showing the car
18 against -- or the truck against the car, correct?
19 A. He does have them engaged, yes.
20 Q. He's got the car halfway off the road at
21 that time, correct?
22 A. At that point, yes.
23 Q. Yes. And --
24 A. It would have to be to contact the curbing
25 and rub the curbing.

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1 Q. Right. So, Mr. Peters got it right here,
2 didn't he, on this drawing?
3 MR. ROZELSKY: Object to the form.
4 THE WITNESS: No. I mean, the Honda
5 has to be over there to rub the curb. The
6 truck position at that point I wouldn't show,
7 because it's unknown or I don't believe he's
8 articulated correctly at that point.
9 BY MS. MCARTHUR:
10 Q. But at any rate, Mr. Peters who is an
11 accident reconstructionist with SEA is who made this
12 drawing and it's in your file, correct?
13 A. It is. He made it. I didn't -- you know,
14 I didn't throw it away. I looked at it and
15 considered it, but -- and we even talked about that.
16 He said that he had just kind of approximated the
17 truck positions and there's certain points he got
18 together between the two vehicles, but he has not --
19 I think if he had to do it over again, he'd leave
20 the truck off there as well.
21 Q. Well, let's take these last two sheets --
22 or actually the last one sheet and we'll mark it as
23 11.
24 (PLF. EXH. 11, Diagram, was marked for
25 identification.)

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1 MR. ROZELSKY: Let the record reflect
2 that it was part of 10. It's now been removed
3 and made 11.
4 MS. MCARTHUR: It will be 11 by
5 itself.
6 THE WITNESS: Again, I should point
7 out on this drawing that Mr. Peters would have
8 done this probably, I think, April of 2012
9 before there's one ounce of testimony or
10 otherwise to support it. He has not updated it
11 since.
12 BY MS. MCARTHUR:
13 Q. Have you done your own drawing similar to
14 this, Mr. Boggess?
15 A. For my purposes, no, I have not.
16 Q. And you have nothing in your record to
17 reflect that you disagreed with this drawing in
18 terms of anything written, do you?
19 MR. ROZELSKY: Object to the form.
20 THE WITNESS: I mean, I didn't write
21 notes that say, this document is -- I disagree
22 for the following reasons. I simply took his
23 document and printed it as it was provided to
24 me.
25 BY MS. MCARTHUR:

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1 Q. Tell me about 3A, B, C and D, if we haven't
2 already talked about those.
3 A. Just to make sure, 3A -- I don't have a
4 copy of 3A is -- I don't have a copy of 3A. I have
5 these images. I'm not sure -- 3 --
6 MR. ROZELSKY: Do you want to hand him
7 the originals and have him give you a copy
8 back? Here I got a copy we can use. I thought
9 we made three copies.
10 MS. MCARTHUR: I'm sure we probably
11 did.
12 BY MS. MCARTHUR:
13 Q. Here's D.
14 A. Is this B, just to be sure? Is that --
15 Q. That's A.
16 MR. ROZELSKY: No, that's A.
17 THE WITNESS: That's A.
18 MR. ROZELSKY: A.
19 THE WITNESS: We called the single page.
20 I'm sorry. Do you want this copy to look at.
21 MR. ROZELSKY: Yes.
22 THE WITNESS: So 3A is a set of
23 calculations that were done.
24 BY MS. MCARTHUR:
25 Q. Just a minute. Okay?

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1 A. Everybody got a copy.
2 Q. Right. 3A is what?
3 A. Yes. 3A are some calculations that I
4 performed. It's based on Alexander's calculations.
5 That would be Sean Alexander. I ran through the
6 math to show the math and get some basic answers
7 that he did. So he has the length of the cab at 23
8 feet, length of the trailer, 51 feet. That's
9 kingpin to the rear.
10 So his length of the truck that he
11 calculated was 74 feet. He then places the length
12 of the Honda at 14.58 feet, based upon all the
13 stats. Then he uses the perceptionary reaction of
14 1.5 seconds, drag factor of .74.
15 And he then, based upon his references,
16 said that the average lane change is 6.06 seconds
17 for a 11-foot lane change.
18 Q. Okay.
19 A. So by -- I guess the next things are givens
20 as well, based on his calculations. Width of lane
21 two or middle lane 12 feet, width of lane three is
22 12.2 feet. And then the width of the vehicles are
23 over to the right, eight feet and 5.5 feet
24 respectively.
25 So he says that the distance of the point

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1 of contact between two vehicles centered in their
2 lane is going to 5.31 feet. Just again, how much
3 width is available between them if the vehicle is
4 centered.
5 So based upon a linear move, he calculates
6 that the time to make the lane change, he said 2.92.
7 If you plug into raw form, I think 2.925. An extra
8 decimal place.
9 He then uses a velocity for the Honda,
10 initially, 50 miles per hour. He shows this
11 equation to calculate that braking -- his braking
12 calculation reduces the vehicle to 23.2 miles an
13 hour over the distance of the truck plus the Honda,
14 which is at 88.58 feet in his calculations. He says
15 that the braking time that that consumes, based on
16 his -calculations, is 1.65 seconds. And then he
17 basically -- I get the impression that he's
18 basically saying, 1.65 plus 1.5, which is
19 perceptionary reaction greater than the 2.92.
20 That's comparing 3.15 and 2.92. Therefore, the
21 accident is unavoidable.
22 Q. So you're checking his math and making sure
23 you were doing it as he did it to be sure --
24 A. Just setting up the equations the same way
25 he has them and making sure that if I play with

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1 it -- you know, my next step is I'm going to change
2 variables based --
3 Q. Okay.
4 A. -- on the some of the conversations we had
5 earlier. But starting with his math.
6 So as we talked about at length earlier,
7 you know, putting the vehicles abreast of one
8 another, side by side as one another, the following
9 modifications are made.
10 So first I take them nose to nose, so
11 instead of -- that would be just be the length of
12 the tractor trailer. So 74 feet by his numbers,
13 that same calculation, the braking comes out -- he's
14 reduced from the 50 to 29.36, that occupies 1.27
15 seconds. So 1.27 plus 1.5 is 2.77, getting to a
16 value that's less than the time available. So
17 presuming his calculations and my understanding of
18 them, that would say the Honda had time to brake and
19 get out from underneath the tractor trailer from a
20 position nose to nose with one another.
21 Now, the next page considers the effect of
22 the tractor trailer moving slightly faster. As we
23 were talking about in the -- if the Honda is moving
24 or the truck is moving faster, it's going to be
25 easier for a vehicle that's moving slower, since

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1 it's inside, to move out from underneath it, because
2 they're going to be moving simultaneously. You
3 know, regardless of the move, obviously over that
4 time frame, the truck has slipped forward of it.
5 Running those numbers, we get to 2.71
6 seconds of time, which, again, is less than that
7 2.92 seconds available per Alexander's calculations.
8 So, again, even with only a mile and-a-half
9 differential in speed, then you should -- the Honda
10 should be able to get out from underneath the
11 tractor trailer and avoid contact altogether.
12 From a steering standpoint, Ms. Little is
13 centered in her lane, as she testified, and given
14 the lane widths as reported by Mr. Alexander, the
15 Honda would have had another 3.3 feet or so to the
16 white edge line. Adding that in, if she shifts over
17 the same time the truck is coming over and is
18 braking -- well, actually, regardless of braking, it
19 would require the truck a time of 4.75 seconds to
20 get over, based on Mr. Alexander's numbers.
21 So again, taking that 2.92 up to 4.75
22 seconds.
23 Now, from Mr. Peters' calculations or
24 measurements, he says that the nose of the truck to
25 the king -- or the fifth wheel is 21.42 feet and the

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1 length of the trailer back from the kingpin is
2 49.75, so a couple of feet shorter for the overall
3 vehicle. Obviously, a little bit shorter vehicle,
4 it's easier to get out from underneath. And that's
5 kinds of the various calculations you see there.
6 The other thing there I guess I get into
7 is, where's the position of the turn marker? How
8 far forward is it from the rear of the vehicle? So
9 she is kind of eye to eye with that marker to her
10 left. How far does she have to brake to get out
11 from underneath the vehicle.
12 That would place her 32.3 feet away from
13 the rear of the vehicle in terms of being able to
14 break out. So you don't have to brake the 74 feet
15 or 72 feet of the vehicle, you only have to go 32
16 feet.
17 Q. So what is 3B?
18 A. 3B is the relative difference between two
19 objects. If they started off at 50, 50 or 55, 50,
20 so a five mile an hour differential. How long it
21 takes to shift a fixed amount of distance. So
22 basically, the longer the time is, the more distance
23 they shift. So what are the relative positions of
24 the two vehicles? This is a plot from Excel that I
25 set the calculations for.

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1 Q. 3C is the --
2 A. 3C and 3D go together. 3D are the inputs
3 and controls that are driving what you see in 3C.
4 And we can go through 3D if we need to, but what
5 I'll hopefully do with these images is describe them
6 and understand what -- and basically describe what's
7 all in 3D.
8 So the first image in 3C is the two
9 vehicles, the tractor trailer and the Honda side by
10 side. The Honda's position is such that the side
11 glass of the Honda's position adjacent to the turn
12 sign on the trailer there's some 30 some odd feet
13 differential between them.
14 If you look in the --
15 THE WITNESS: Are yours in color?
16 MR. ROZELSKY: Yes.
17 THE WITNESS: Okay, good. The blue
18 table box, that is the data for the
19 Freightliner cab itself. To the right of that
20 in the gray box is the data for the trailer.
21 The log data. And the green box is for the
22 Honda itself.
23 If you're looking at the little block
24 up here at the top line, the 0.000 is time.
25 So basically time zero, they're side

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1 by side. The -- at least in this setup, the
2 Honda and the Freightliner both set at 50 miles
3 an hour, and the Z -- or I'm sorry -- the Y
4 position of the tractor is zero. The Y
5 position of the Honda, which is the lateral
6 position is 12.08 feet to the right.
7 So again, one lane over, centered in
8 its lane, same as Mr. Alexander has talked
9 about.
10 The next page is simply showing that,
11 given a steer maneuver controlled by this table
12 up here -- what I did is I looked and said,
13 okay, I'm going take this tractor trailer
14 through a right turn back to a straight --
15 basically straighten it back out. It's going
16 to make an 11 -- I believe an 11-foot shift
17 over to 6.06 seconds roughly, based on
18 Mr. Alexander's numbers.
19 But what I'm showing here is 2.95
20 seconds. It has shifted. The tractor has
21 shifted 5.35 feet to the right, which is
22 basically the same thing Mr. Alexander is
23 showing. So that's what the tractor trailer
24 would look like at the end of the time in its
25 lane shift.

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1 One thing to point out here is that in
2 the -- for the trailer, its Y position is
3 almost two feet less than the tractor position.
4 So it's not coming, as we were talking about
5 earlier, parallel shift, it's an angled
6 approach so that someone breaking out from
7 underneath actually has more time and more
8 margin to the vehicle.
9 Now, the next -- third page, instead
10 of just bringing the -- running just the
11 tractor and the trailer together, I basically
12 advanced it to a point where the Honda has gone
13 straight. It's maintained 50 miles an hour of
14 speed -- I'm sorry, no, it hasn't. It's
15 braking. Excuse me. It's braking. It's
16 braking. If you look at the last line down
17 there to the green it's .74 g's in the green
18 box. It's braked under that average
19 acceleration. The brakes are turned on at 1.5
20 seconds after and the truck immediately starts
21 to turn in this scenario.
22 So 1.5 second for perception reaction.
23 Brakes come on, .74 g's. That's what this
24 looks like, essentially, at 3.15 seconds.
25 The nose of the Honda has couple feet

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1 of margin left -- right to left of the rear of
2 the trailer, and it slides out from behind the
3 truck and no contact occurs. And that's for
4 two vehicles starting at 50 miles an hour.
5 The next is if the truck, instead is
6 going 55 miles an hour, and as I said -- and
7 the car started off at 50, obviously the --
8 that's going to be easier to miss. I'm simply
9 showing that it would be more likely to miss
10 with more margin if it braked in the same
11 manner.
12 The next page is, if I slide the Honda
13 up to the side so that the wheel is adjacent to
14 the step, on the passenger cab of the truck.
15 Two vehicles going 50 miles an hour, running
16 the exact same way. Same steering maneuver,
17 same braking maneuver, 1.5 seconds. And what
18 happens is on the next page, as you can see the
19 truck basically reaches roughly the same point,
20 and the Honda, again, is missing the tractor
21 trailer.
22 Now, the -- actually, that was at 55 and a
23 50 mile an hour split.
24 So, if they're both doing exactly the
25 same speed, 50/50, with one and-a-half seconds

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1 perception, and you're starting from the front
2 of the cab there, this does predict that the
3 rear edge of the trailer would just scrape the
4 left front corner of the Honda. So there would
5 be a slight contact before the Honda escapes
6 out the back. It certainly would be behind the
7 tandem wheels, and you would get scrape on the
8 Honda.
9 Again, that assumes that the Honda
10 maintains a straight path and realistically
11 really doesn't do anything other than brake --
12 a straight line braking.
13 Now, the next page gets into the steer
14 maneuver, so what I do is I say it's one
15 and-a-half seconds, which realistically it
16 actually ought to be sooner, because if your
17 hands are on the steering wheel, you can steer
18 earlier. But if it steers three feet to the
19 right, this is -- again, I left the truck
20 stationary initially but just moved the Honda
21 out and run it -- you know, it's three feet
22 over in that scenario, and I was playing with
23 how to get the steering maneuver correct to get
24 a three foot lane divergence.
25 I go back to that 50/50 case where the

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<p style="text-align: right;">Page 161</p> <p>1 Honda starts up parallel to the side -- or 2 adjacent to the side of the cab. They're both 3 doing 50. If the Honda brakes -- and that's at 4 a slightly less acceleration. It's not even 5 maximum braking, slightly reduced braking and 6 steers to the right those three feet, they 7 missed by several feet in terms of contact. 8 And the last two pages, I go back to 9 the original scenario where the Honda is 10 abreast of the turn signal on the trailer. If 11 we assume that the perception reaction is even 12 slower, instead of saying one and-a-half 13 seconds, lets give her two seconds to react and 14 hit the brakes. Under both scenarios of the 15 50/50 speed and a 55 by the truck, 50 by the 16 Honda, we get a missed condition. 17 So there would be no contact between 18 the two vehicles. 19 Q. Okay. Going back to 4B? 20 A. That's the billings? 21 Q. Yes. You have billed, it looks like only 22 through December 26th of 2012? 23 A. Those are for billings generated. There's 24 obviously -- over the last two weeks here, there's 25 going to be time on time sheets that have not made</p>	<p style="text-align: right;">Page 163</p> <p>1 exact number. I mean, obviously I've read all these 2 depositions, gone through Mr. Alexander's file and 3 created these analysis files, so certainly a number 4 of hours have been done. I don't know if it's 10 or 5 20 or more. 6 Q. It's a lot more than what's on these bills; 7 isn't it? 8 A. Yes, ma'am. Certainly for my time. 9 Q. Effectively, I don't really have your bill 10 here because -- 11 A. Well, I don't have a bill. I mean, I 12 haven't generated a bill so I don't have one to give 13 you. 14 MR. ROZELSKY: Since tomorrow is the 15 1st, I'll probably get it tomorrow afternoon. 16 MS. MCARTHUR: Can you attach when you 17 read and sign the deposition? 18 MR. ROZELSKY: Yeah, I'll supplement 19 however you want to do it. I mean, since it's 20 not here and not part of the deposition, I'd 21 rather supplement it to you outside of the 22 deposition. 23 MS. MCARTHUR: Well, to whatever 24 extent it can find its way to get with the 25 others, I would appreciate it.</p>
<p style="text-align: right;">Page 162</p> <p>1 the system and/or been billed. So I don't have any 2 bills to be able to produce at this time. I, you 3 know, down the road certainly can get those once 4 they're generated. 5 Q. I mean, all the reading of depositions and 6 all that's been done since then, hasn't it? 7 A. Yes, ma'am. 8 Q. So the majority of your time -- you don't 9 have your bill here for it? 10 A. No, because no billing has been generated. 11 We bill on a 30-day cycle, and most of it has been 12 done in the last 30 days. 13 Q. Do you have a record of the hours? 14 A. I don't, no. 15 Q. Have you compiled the hours yourself? 16 A. I don't. We basically -- we turn in a kind 17 of Excel generated spreadsheet to accounting and 18 they have an accounting system that maintains all 19 that. Until billing is generated, I don't have any 20 way to, I guess, access that other than I guess go 21 through time sheets and pull line items of my 22 time. 23 Q. You don't have any idea how much time 24 you've put in on this? 25 A. I mean, I can guess, but I don't have an</p>	<p style="text-align: right;">Page 164</p> <p>1 MR. ROZELSKY: No problem. As soon as 2 I get it, you will get a copy. 3 BY MS. MCARTHUR: 4 Q. Look at Page 4 of your report, please. 5 A. I'm there. 6 Q. It's got the accident report diagram there. 7 A. Yes, ma'am. 8 Q. Do you believe that diagram is not 9 correct? 10 MR. ROZELSKY: Object to the form. 11 THE WITNESS: I mean, it's not a 12 scaled diagram. There are certainly issues 13 with it because of that. I mean, it's for an 14 illustrated general purposes. That's what I 15 take it for. 16 Q. Can you point to anything that you say is 17 just wrong? 18 A. Well, we know when the vehicles get in 19 contact with one another that the -- I mean, it 20 looks like there's a full lane width between the 21 right edge line and the white fog line and what 22 looks like their impression of the guardrail. 23 Clearly that is not accurate. 24 I mean, I take away from this simply that 25 the truck is merging into -- has merged into the</p>

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<p style="text-align: right;">Page 165</p> <p>1 Honda, and the two vehicles tracked up to rest on 2 the shoulder some distance up the road. 3 MS. MCARTHUR: My understanding is 4 you're not producing him for opinions 5 concerning injuries. 6 MR. ROZELSKY: Correct. 7 BY MS. MCARTHUR: 8 Q. Look at Page 8, Figure 8. 9 A. Yes, ma'am. 10 Q. Is that Mr. Peters in the black? 11 A. I believe Mr. Peters is taking photographs. 12 It looks like Mr. Rozelsky. I may be incorrect. 13 Q. That Kurt. Kurt, Laura and Sean, I 14 believe. Okay. 15 On Page 13, we've already agreed, have we 16 not, that the initial impact between the truck and 17 the car occurred back on the bridge, correct? 18 A. Yes. 19 Q. And how far back on the bridge was the 20 initial impact? I think you told me already it 21 was -- 22 A. You know where the gouge mark is? I think 23 we talked about that. I think about 150 feet, but I 24 didn't have an exact number. 25 As far as the initial contact, it would be</p>	<p style="text-align: right;">Page 167</p> <p>1 Q. Okay. Other than Mr. Peters' drawing that 2 I made Exhibit Number 11, you don't have a scaled 3 diagram? 4 MR. ROZELSKY: Object to the form. 5 THE WITNESS: Well, Number 10, the 6 last two pages are diagrams. This within 10 is 7 a scaled diagram of the scene. 8 BY MS. MCARTHUR: 9 Q. But you don't have any drawing done by 10 either Mr. Peters or by yourself that have the 11 measurements of how wide the bridge is, how -- you 12 know, the length of the bridge, the point where the 13 first contact was made, the -- basically, the 14 measurements of all the significant features as far 15 as where it was, where the car was captured by the 16 trailer, you don't have any of that noted? 17 MR. ROZELSKY: Object to the form. 18 THE WITNESS: The data is in here. 19 But, again, this is a CAD file. Every one of 20 these points is X, Y, Z data. So, I mean, I've 21 gone into the CAD file, I have looked at 22 Mr. Peters' notes from the scene as well as the 23 CAD file for comparison. 24 And from my work, I have not -- or as 25 part of my work, I have generated or needed to</p>
<p style="text-align: right;">Page 166</p> <p>1 obviously somewhere before that. 2 Q. Somewhere before 150 feet from the end of 3 the bridge? 4 A. Yes. 5 Q. So where you say here that the impact 6 between the Freightliner and its semi-trailer and 7 the Honda occurring in the right lane of I-16 west 8 just prior to the gore point of I-75, that's not 9 right, is it? 10 MR. ROZELSKY: Object to the form. 11 THE WITNESS: I mean, I don't give a 12 dimension. I say just prior. Retaliative to 13 what, it's prior to the gore point. 14 BY MS. MCARTHUR: 15 Q. How far is the bridge from the gore point, 16 the end of the bridge? 17 A. It looks like maybe two dash lines, so 80 18 feet. Again, I'm looking at a photograph. I don't 19 know. I'd have to go back to the CAD file to 20 measure that. 21 Q. So you don't have a scaled diagram here 22 today, do you? 23 A. Aside from what Mr. Peters provided, no. I 24 mean -- well, I do. I mean, Mr. Peters' drawing 25 that we looked at.</p>	<p style="text-align: right;">Page 168</p> <p>1 generate the exact measurement of the tire 2 mark, for example. It's not been important for 3 my purposes as asked to do in this case. 4 BY MS. MCARTHUR: 5 Q. So, you've not made a drawings that has 6 those measurements on it? 7 A. Not called out, no. I mean; again, all you 8 do, you open that file and you click on the two 9 points and have it put the measurement. 10 Q. So when I ask you those questions today, 11 though, you can't give me the answers because you 12 don't have a computer in front of you? 13 A. That would correct. 14 Q. So I can't get the answers from you to know 15 what they are in this deposition? 16 A. If you need those numbers from me, no. I 17 can't give you those numbers. Again, for my 18 purposes, it has not been critical to call those out 19 and discuss those. 20 Q. Okay. I'm on Page 13 now. Are you -- 21 okay. The first sentence: "Based on the accident 22 report and testimony, the two drivers involved in 23 this incident -- in the incident are in contention 24 regarding who struck whom first." 25 That's not really in question, is it,</p>

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<p style="text-align: right;">Page 169</p> <p>1 Mr. Boggess? Mr. McClure struck Ms. Little, didn't 2 he? 3 MR. ROZELSKY: Object to the form. 4 THE WITNESS: This sentence is not 5 incorrect. I mean, the two drivers are in 6 contention. Obviously, Mr. McClure adamantly 7 disagrees. 8 Now, do we both -- in my opinion and 9 my belief here, obviously Mr. McClure did make 10 a left to right lane change and contacted the 11 Civic. 12 BY MS. MCARTHUR: 13 Q. It's not true that Ms. Little ran up and 14 his Mr. McClure after he had already started his 15 lane change. 16 MR. ROZELSKY: Object to the form. 17 BY MS. MCARTHUR: 18 Q. Is it? 19 A. No, I don't see evidence of that. 20 Q. You had understood that Miss Smith said 21 that Mr. Hunter had a much better advantage point 22 than did she to testify about what happened in this 23 case, didn't she? 24 A. Something to that effect, yes. 25 Q. So, then you say: "Assuming that the</p>	<p style="text-align: right;">Page 171</p> <p>1 discusses. 2 Q. Are you familiar with the theory where 3 there is an emergency situation that drivers are not 4 held to the same level of care where there is not an 5 emergency situation? 6 MR. ROZELSKY: Object to the form. 7 THE WITNESS: I'm not sure what standard 8 you're speaking of. 9 BY MS. MCARTHUR: 10 Q. Well, that in an emergency situation, such 11 as -- which I'm going ask you to assume this was an 12 emergency as far as Miss Little was concerned. I 13 mean, she could have sped up, she could have slowed 14 down, she could have steered right, she could have 15 done anything of those things potentially, 16 correct? 17 A. Those were available to her, yes. 18 Q. And sometimes people make the wrong choice 19 in an emergency; isn't that true? 20 MR. ROZELSKY: Object to the form. 21 THE WITNESS: Some people do, yes. 22 BY MS. MCARTHUR: 23 Q. And she could have actually hit the gas as 24 hard as she could to try to get out of the way. Is 25 it -- you didn't include that scenario?</p>
<p style="text-align: right;">Page 170</p> <p>1 tractor trailer did merge into the Honda as has been 2 alleged." Well, the tractor trailer did merge into 3 the Honda, didn't it? 4 A. Yeah, I'm accepting that. That's why, 5 again, I'm not -- 6 Q. "The question remains as to whether 7 Ms. Little, the driver of the Honda, contributed to 8 the accident." And that's really what you were 9 asked to determine, wasn't it? 10 A. Certainly the main thing, yes. 11 Q. That was the main thing? 12 A. It seems that way based on my opinions and 13 report, yes. 14 Q. And whether Ms. Little had the last 15 reasonable opportunity to avoid the subject 16 accident. That's what you were asked to determine 17 is -- you were asked to find fault on Ms. Little if 18 there was any to be found? 19 A. I mean, the first opinion is, how did the 20 vehicles get together, and we talked about 21 positions, and speeds and other things. But 22 secondarily, certainly, yes, the question was 23 whether Ms. Little had the opportunity to do 24 something about the accident and avoid it. That's 25 what the majority of the remainder of this report</p>	<p style="text-align: right;">Page 172</p> <p>1 MR. ROZELSKY: Object to the form. 2 BY MS. MCARTHUR: 3 Q. Did you? 4 A. Based on the positioning and the -- what is 5 in my report is what I considered at this point. I 6 can consider other scenarios, but -- 7 Q. Well, I mean, if she was back at the center 8 of the trailer and he's merging over and she decided 9 to hit the gas and try to go around the front, she 10 wouldn't have made it, would she? 11 MR. ROZELSKY: Object to the form. 12 THE WITNESS: I'd have to run that 13 calculation. 14 BY MS. MCARTHUR: 15 Q. That's why you hadn't made it, isn't it, 16 because he was coming over and she would have ended 17 up not making it around him, correct? 18 MR. ROZELSKY: Object to the form. 19 THE WITNESS: Well, she said she did 20 nothing in the incident in the terms of 21 reaction. She didn't accelerate. She didn't 22 decelerate. 23 But, ultimately, she's put herself 24 next to the trailer. She ends up contacting up 25 front. So without doing anything, she's</p>

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1 already made it that far.
2 There may be the opportunity to final
3 analyze it, if she accelerates she could miss.
4 BY MS. MCARTHUR:
5 Q. So you're saying she put herself there.
6 You're saying that in her testimony or --
7 A. She places herself next to the trailer,
8 meaning that she's looking -- as we talked about,
9 she's looking at the turn signal. So she
10 articulates where she was relative to the trailer
11 when this starts.
12 Q. You're not meaning to say that she drove up
13 beside him. You're meaning to say that when she's
14 talking about it, she says I was here.
15 MR. ROZELSKY: Object to the form.
16 THE WITNESS: Correct.
17 BY MS. MCARTHUR:
18 Q. You understood, did you not, Mr. Boggess
19 that Ms. Little, once she realized that her car was
20 captured and she had no steering capability anymore,
21 that's when she left the driver's seat?
22 MR. ROZELSKY: Object to the form.
23 THE WITNESS: Certainly the point of
24 capture occurred on the bridge as we talked
25 about. And obviously, until the bridge --

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1 until the guardrail shifts over, she doesn't
2 have the space to jump out.
3 Once she's made that decision, it
4 would have been obviously sometime before, and
5 it's going to take her some time to get out of
6 the driver's seat, across the vehicle and get
7 the door open.
8 BY MS. MCARTHUR:
9 Q. Well, at the point that her car is being
10 controlled by the truck, it doesn't really matter
11 though, does it?
12 MR. ROZELSKY: Object to the form.
13 BY MS. MCARTHUR:
14 Q. It's not a function -- you're not saying
15 that her car was loose from the truck and that she
16 then left the driver's seat, are you, in your
17 testimony -- or in your report here?
18 A. I don't believe I've said that in this
19 report, no.
20 Q. Are you making the assumption that she left
21 the driver's seat before she was actually captured
22 by the back trailer wheels?
23 A. I haven't tried to determine that at this
24 point. I just simply know that she did leave the
25 driver's seat and make the decision. I have not

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1 tried to figure out the timing at this point.
2 Q. That's a reaction -- that's perception on
3 reaction, isn't it?
4 A. An eventual one, after -- as you're asking
5 me to assume, after she's already been captured,
6 trapped by the truck.
7 Q. By the way, how fearful or how scared for
8 their life does a person have to be to leap out of a
9 moving vehicle being dragged by a truck, in your
10 opinion?
11 MR. ROZELSKY: Object to the form.
12 THE WITNESS: I don't have an opinion
13 to that.
14 BY MS. MCARTHUR:
15 Q. You agree me, don't you, that she had to
16 have thought she was going to die or she would not
17 have not jumped out of that car?
18 MR. ROZELSKY: Object to the form.
19 THE WITNESS: She has to, obviously,
20 have some amount of fear, but I don't have any
21 way to quantify that.
22 BY MS. MCARTHUR:
23 Q. And it was a judgment call on her part
24 whether to do anything or nothing to try to avoid
25 the truck, wasn't it? She didn't know what to do is

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1 what she testified, correct?
2 A. At some point, she comes to that
3 realization, or she makes that assumption.
4 Q. Right.
5 A. Again, we're talking about two different
6 things; the decision to jump from the vehicle after
7 becoming entrapped versus the decision or lack of
8 decision to do anything when this truck starts to
9 merge over at you. So, I mean, there's two separate
10 events almost.
11 Q. Both are a judgments made in the height of
12 an emergency, aren't they?
13 MR. ROZELSKY: Object to the form.
14 BY MS. MCARTHUR:
15 Q. From her perspective.
16 A. They're two separate decisions, yes.
17 Q. But you're not saying that -- you know, she
18 actually testified in her deposition as soon as her
19 vehicle was under the control of the truck back at
20 the trailer tires, that's when it was captured
21 there, that's when she left the seat?
22 MR. ROZELSKY: Object to the form.
23 BY MS. MCARTHUR:
24 Q. Didn't she?
25 A. I'd have to look back at that. I don't --

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1 I'd have to look at when she made the decision to --
2 she says: "As soon as he hit me, my phone flew out
3 of my hand into the windshield. He hit me so hard
4 he had control of my wheel. And once I noticed
5 that, I looked right and there was three to four
6 feet between my passenger door and the guardrail. I
7 climbed over and jumped."
8 Q. Look at Page 45, Line 22, okay? The
9 question: "How do you know it had control -- the
10 tractor trailer impact had control of your wheel?"
11 "Because my car was doing exactly what his truck was
12 doing?" That's what --
13 A. Where are you reading that from, sorry?
14 Q. The bottom of Page 45.
15 A. Okay.
16 MR. ROZELSKY: Was there a question
17 for me to object to or were you just reading?
18 MS. MCARTHUR: I'm trying find where
19 she said control.
20 BY MS. MCARTHUR:
21 Q. Okay. Here it is. So she defines -- Page
22 45, Line 22: "How do you know it had control? The
23 tractor trailer impact had control of you?"
24 "Because my car was doing exactly what his truck was
25 doing." Okay. You saw that?

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1 A. Yes.
2 Q. Going back to Page 44 at the bottom of the
3 page, the last -- Line 19: "And when he hit me, he
4 hit me so hard he had control of my wheel. As soon
5 as I noticed that he had control of my wheel, I
6 looked over to my right and there was about three or
7 four feet between my passenger door and the
8 guardrail, because right passed the bridge comes the
9 guardrail and, like, extends to the right. And when
10 he hit me hard enough to where or -- when I jumped
11 out -- let me says this. Okay? Right before I
12 jumped out, I looked over and there were three or
13 four feet between the passenger door and the
14 guardrail. Well, when I -- when he get me, I
15 climbed over, I looked over, okay -- let me start
16 over."
17 She goes again. But what she's saying is
18 once the truck had control of her car, that's when
19 she decided to jump out, correct?
20 MR. ROZELSKY: Object to the form.
21 THE WITNESS: Yeah, her testimony
22 speaks for itself. She thinks it has control.
23 You know, Page 46, the question: "Did you at
24 any point try to steer to the right to pull
25 free from the truck?" "No."

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1 BY MS. MCARTHUR:
2 Q. And that's --
3 A. It has control, but she's not seeing if she
4 can do anything about it.
5 Q. At any rate, the point where the truck has
6 control of her vehicle is when it's resting against
7 the trailer tires at the back, correct?
8 A. From her testimony, she indicates that the
9 guardrail space is opened up and that's when she
10 makes the decision. So that would be after the
11 bridge and after entrapment at the back of the
12 wheels.
13 Q. We've already agreed that she was against
14 the trailer wheels still on the bridge there.
15 A. Which is what I hopefully just articulated,
16 but, yes. She was entrapped before she left the
17 bridge.
18 Q. And that's when she left the driver's seat
19 to jump out?
20 A. That's what she testifies to, yes.
21 Q. So it's not a function of her car becoming
22 loose and the truck hitting her back and forth, and
23 while her car is still loose she jumps into the
24 passenger seat to open the car and jump out,
25 correct?

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1 MR. ROZELSKY: Object to the form.
2 THE WITNESS: Obviously, that's not
3 her testimony, no.
4 BY MS. MCARTHUR:
5 Q. So you didn't mean to describe a situation
6 where she leaves the driver's seat and her vehicle
7 is still in the process of moving backward to hit
8 the trailer wheels, did you?
9 A. I don't think I said that, no.
10 Q. Okay.
11 A. Maybe -- again, the reactions that I'm
12 talking about are all before the first point of
13 contact even. I mean, it's the -- generally
14 speaking, it's the -- you know, while the truck --
15 the amount of time the truck takes to make a lane
16 change and her lack of reaction to that.
17 Q. Why do you think that Mr. McClure didn't
18 see her?
19 MR. ROZELSKY: Object to the form.
20 THE WITNESS: Blind spot, watching
21 traffic, you know, missed him.
22 BY MS. MCARTHUR:
23 Q. You don't know?
24 A. I don't know. It happens every day to
25 people. You start merging over, and people miss

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1 seeing them in their blind spot. I can only imagine
2 on a tractor trailer.
3 Q. As far as use of the cell phone, do you
4 know that that's against the North Carolina
5 Driver's -- Commercial Driver's Manual?
6 MR. ROZELSKY: Object to the form.
7 THE WITNESS: I haven't looked that up
8 specifically.
9 BY MS. MCARTHUR:
10 Q. Are you any kind of authority or expert on
11 trucking regulations?
12 A. I have certainly researched and probably
13 testified to some of them at one point or another
14 when asked.
15 Q. It's true that Mr. McClure was supposed to
16 be drug and alcohol tested within a short period of
17 time after this wreck, isn't it?
18 MR. ROZELSKY: Object to the form.
19 And again, it goes beyond the scope of what
20 we've identified him for.
21 THE WITNESS: I have not
22 re-researched. I've looked into that in the
23 past on other cases, but I've not -- I don't
24 know the rule of thumb on that as we sit here.
25 I'd have to look that up.

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1 BY MS. MCARTHUR:
2 Q. You don't know how long the person -- how
3 long it is after the wreck that a person with
4 injuries and a person is supposed to -- or a truck
5 driver is supposed to be tested?
6 MR. ROZELSKY: Object to the form.
7 THE WITNESS: Not as we sit here. I
8 mean, I know there's different -- I recall
9 different rules for fatalities versus no injury
10 versus some injury, but, again, I'd have to
11 look at the rules to know for sure. I haven't
12 been asked to do that in this case, so I'm not
13 offering opinions as to that.
14 BY MS. MCARTHUR:
15 Q. Well, without even being asked, you know
16 that truck drivers, where serious injuries occur,
17 are supposed to be drug and alcohol tested, don't
18 you?
19 MR. ROZELSKY: Object to the form.
20 THE WITNESS: Again, I'd have to look
21 it up.
22 BY MS. MCARTHUR:
23 Q. You don't know?
24 A. In some cases, yes. I'd have to look up
25 the circumstance and look at -- I have to go over

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1 the regulation.
2 Q. You understand he was not tested within
3 eight hours, don't you, for alcohol?
4 A. From his deposition, I believe he testified
5 as that, so that's the extent of my knowledge of
6 that.
7 Q. At the -- on Page 16 of your report, you go
8 into saying that you're going to be reviewing the
9 deposition transcript of David Strayer, and that you
10 may do all sorts of things. And this is my time to
11 depose you and to see and know what you're going to
12 testify to, and what you're going to prepare or what
13 you have prepared. And have you produced to me all
14 of your opinions and what you have prepared in this
15 case?
16 A. Today, yes, ma'am. I mean, I don't -- my
17 entire file is before you here. And as we sit here,
18 I don't know of any necessarily additional work
19 beyond possibly outputting those video files that
20 you've asked for from the simulation.
21 So if we leave here and Mr. Rozelsky asks
22 for something else, I may do that.
23 Q. It say you may prepare demonstrative
24 exhibits. Have you prepared any demonstrative
25 exhibits?

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1 A. Not outside of what's in my file here, no.
2 Q. Have you reviewed this David Strayer
3 deposition?
4 A. My understanding is that transcript is not
5 available yet, so, no.
6 Q. Do you feel you need to do additional work
7 in this case?
8 A. Not at this time.
9 MS. MCARTHUR: I think that's
10 everything.
11 MR. ROZELSKY: I have no questions.
12 THE COURT REPORTER: Would you like a
13 copy, Mr. Rozelsky?
14 MR. ROZELSKY: Yes, ma'am.
15 MS. MCARTHUR: Let me do one thing.
16 BY MS. MCARTHUR:
17 Q. You have reviewed Sean Alexander's
18 deposition, Officer Williams, Lorraine Smith, Alonzo
19 McClure, the complaint, you've got some references
20 which are in your report. You've got the SEA
21 photos. You've got the Hunter affidavit, you have
22 the Lindsey Little deposition, the police photos,
23 the accident report, your report, you have
24 deposition summaries, you have the drawings, you
25 have the ECM report, you have the -- some papers

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<p>Page 185</p> <p>1 about setting up this deposition with me, you have 2 the Sean Alexander report, you have the inspection 3 notes from Mr. Peters, and you have the vehicle 4 specs. Is that everything that you've reviewed? 5 A. You have Sean Alexander's report? 6 Q. All the things that were marked as 7 exhibits, and you have the complete Sean Alexander 8 file. 9 A. Yes, ma'am. 10 Q. What is this analysis file? 11 A. That is what you pulled the other analysis 12 materials out of for the -- 3A, B, C, D, I believe 13 all came out was there. There's three -- there's 14 two PowerPoints at the end and crush profiles that 15 we were talking about that Mr. Peters did based on 16 photo modeling. 17 And then the first packet is excerpts from 18 the police reports, the vehicle specs, and then some 19 crush analysis calculations that don't end up 20 getting used ever based on my report, the initial 21 crush analysis. 22 Q. Well, I'd like to have these marked? 23 A. You want to mark that as 3E to keep them 24 with the analysis. 25 BY ES. MCARTHUR:</p>	<p>Page 187</p> <p>1 MR. ROZELSKY: Let's do a clean 2 version of 2. 3 (The deposition was concluded at 2:45 p.m.) 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p>Page 186</p> <p>1 Q. 3E. Okay. 2 A. Because that all came out of the analysis. 3 MR. ROZELSKY: Is that everything? 4 THE WITNESS: Yes. 5 MS. MCARTHUR: I hope so. 6 (PLF. EXH. 3E, Definition of 7 vehicles, was marked for identification.) 8 MR. ROZELSKY: I just want to put one 9 thing on the record, and that is the one 10 original, which is I believe Exhibit 2, the 11 handwritten notes on it are handwritten notes 12 of counsel and were not out of the original 13 file. I just want to make sure we're clear. 14 MS. MCARTHUR: Do you want to 15 substitute one that doesn't have it? 16 MR. ROZELSKY: Oh, we can do that. 17 Yeah, that's easier. 18 MS. MCARTHUR: Why don't we substitute 19 one that doesn't have my notes on it. 20 THE WITNESS: Make that 3? 21 MR. ROZELSKY: You want to make that 3 22 and we'll -- have her mark that as -- isn't 23 that 2? 24 THE WITNESS: That's 2. 25 MS. MCARTHUR: That's Number 2.</p>	<p>Page 188</p> <p>1 ERRATA SHEET 2 Pursuant to the Rules of Civil Procedure, any 3 changes in form of substance which you desire to 4 make to your deposition testimony shall be entered 5 upon the deposition with a statement of the reasons 6 given for making them. 7 To assist you in making any such corrections, 8 please use the form below. If supplemental or 9 additional pages are necessary, please furnish same 10 and attach them to this errata sheet. 11 12 --- 13 14 I, BRIAN BOGGESE, SEA do hereby certify that I 15 have read the foregoing deposition and that to the 16 best of my knowledge said deposition is true and 17 accurate (with the exception of the following 18 corrections lest below.) 19 20 21 22 23 24 25</p>

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1 Page No. _____ Line No. _____ Change to:

2 _____

3 Reason for Change: _____

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14 Page No. _____ Line No. _____ Change to:

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16 Reason for Change: _____

17 _____

18 _____

19 SIGNATURE: _____

20 Sworn to and Subscribed before me

21 _____, Notary Public.

22 This _____ day of _____, 2013.

23 My Commission Expires:

24 _____

25 _____

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1 CERTIFICATE OF REPORTER

2 SOUTH CAROLINA:

3 GREENVILLE COUNTY:

4 _____

5 I hereby certify that the foregoing deposition

6 was reported, as stated in the caption, and the

7 questions and answers thereto were reduced to the

8 written page under my direction; that the foregoing

9 pages represent a true and correct transcript of the

10 evidence given. I further certify that I am not in

11 any way financially interested in the result of said

12 case.

13 Pursuant to Rules and Regulations, I make the

14 following disclosure:

15 I am a South Carolina Certified Court Reporter.

16 I am here as an independent contractor for Huseby,

17 Inc.

18 I was contracted by the offices of Huseby, Inc.

19 to provide court reporting services for this

20 deposition. I will not be taking this deposition

21 under any contract.

22 I have no written contract to provide reporting

23 services with any party to the case, any counsel in

24 the case, or any reporter or reporting agency from

25 whom a referral might have been made to cover this

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1 deposition. I will charge my usual and customary

2 rates to all parties in the case.

3 This, the 15th day of November 2011.

4 _____

5 _____

6 _____

7 _____

8 Sharon G. Hardoon

9 Court Reporter, Notary Public

10 My commission expires:

11 April 7, 2018

12 _____

13 _____

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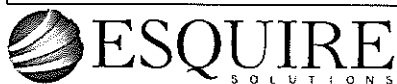


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